TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 89.

THE GEORGIA RAILROAD AND BANKING COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, AND JOHN W. NELMS, SHERIFF OF FULTON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED AUGUST 19, 1907.

(20,349.)

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THE GEORGIA RAILROAD AND BANKING COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, AND JOHN W. NELMS, SHERIFF OF FULTON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Order allowing writ of error	3	2
Citation and service	4	2
Petition for writ of error	5	3
Bond on writ of error	7	4
Assignment of errors	9	5
Bill of exceptions from superior court of Fulton county	17	10
Statement	17	10
Paragraph 6 of answer	18	11
First error assigned	19	11
Second error assigned	20	11
Further errors assigned	21	12
Designation of parts of record necessary on appeal	31	16
Judge's certificate to bill of exceptions	32	17
Clerk's certificate to bill of exceptions	34	18

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	Original.	Print.
Record from superior court of Fulton county	35	18
Petition	36	18
Exhibit A—Meeting of board of directors, October 27, 1882.	49	24
B—Statement of assessments made by the Comptroller General of Georgia on the 15,000 shares of stock of the Western Railway of Alabama for taxation beginning with the year 1883 to the year 1904	53	26
C—Sheriff's notice of levy	54	27
Subpœna	56	28
Order to show cause	56	28
Order denying injunction	57	28
Amended petition, April 24, 1905	58	29
Fi. fa. for State taxes	68	33
Answer	70	35
Exhibit A—Demurrer	71	35
B—Plea	76	38
C—Answer	79	39
Amended answer, April 26, 1905	102	50
Amended petition, May 18, 1905	103	50
Annual return for taxes, March 15, 1903	107	52
Amended answer, January 30, 1906	109	53
Amended petition, January 30, 1906	115	55
Order for trial without jury	119	57
Decree	119	57
Motion for new trial	121	58
Order overruling motion for new trial	129	62
Brief of evidence	130	62
Deed of March 29, 1883	130	62
Tax returns	132	63
Letter of May 4, 1889, Goodrich to comptroller	132	64
Page 4 of annual report	133	64
Affidavit of C. G. Goodrich	135	65
Thos. K. Scott	136	66
Tax receivers	138	66
J. M. Crozier	141	68
E. Gary Summers	141	68
Z. H. Shelley	141	68
John H. Dugger	142	68
W. E. Clarke	142	69
W. R. Pope	142	69
Admission as to facts	142	69
Extracts from report of comptroller for 1903	143	69
Return of Georgia Railroad and Banking Co., Mar. 1, 1895.	144	69
Assessment of Western Railway of Alabama for 1895	145	70
Assessment of Western Railway of Alabama for 1896 to 1904.	146	70
Admission as to facts	146	71
Executions	146	71
Levy	148	72
Notice of levy	149	72
Extracts from docket of comptroller	150	73
Table showing assessment on the 15,000 shares of stock of Western Railway of Alabama, &c., 1895–1904.	151	73

	Original.	Print.
Statement showing dividends, &c	152	74
Affidavit of Charles G. Goodrich	153	74
Affidavit of W. E. Bush	158	77
Exhibit A—Statement	163	79
Affidavit of Geo. H. Richter	164	80
Exhibit A—Tables of assessments, 1895–1904	169	83
B—Table showing operating ratio	182	89
Affidavit of John Bell	183	90
Tax returns of Atlanta and West Point Railroad Company	185	91
Summary of assessments of corporations	185	91
Affidavit of F. A. Healy	186	91
Financial reports of Western Railway of Alabama and Atlanta and West Point Railroad Company	187	92
Testimony of A. W. Smith	197	100
Testimony of T. A. Hammond	202	102
Letter from Comptroller to Forrest Adair, July 25, 1905	205	104
Letter from Comptroller to Forrest Adair, August 14, 1905	207	105
Testimony of Forrest Adair	208	105
Evidence of defendants	210	106
Transcript of record in case of Wright, comptroller general, *vs.* Louisville and Nashville Railroad Company	210	106
Bill of complaint	210	106
Answer	220	111
Opinion of Judge Newman	222	111
Decree	238	118
Summons and severance	239	119
Stipulation as to record on appeal	240	119
Assignment of errors	241	120
Appeal bond	243	120
Opinion of the Supreme Court of the United States	244	121
Mandate of the Supreme Court of the United States	250	124
Decree on mandate	252	125
Affidavit of Wm. A. Wright	252	125
Letter, Comptroller General to Phinizy, January 27, 1905	256	126
Letter, Phinizy to Comptroller General, January 28, 1905	257	127
Letter, Phinizy to Comptroller General, January 30, 1905	258	127
Letter, Phinizy to Comptroller General, February 10, 1905	258	127
Letter, Phinizy to Comptroller General, February 18, 1905	259	128
Letter, Cumming to Comptroller General, Jan. 28, 1905	260	128
Letter, Cumming to Comptroller General, Feb. 1, 1905	260	128
Letter, Cumming to Comptroller General, Feb. 4, 1905	260	128
Letter, Cumming to Comptroller General, Jan. 30, 1905	261	128
Telegram, Cumming to Comptroller General, Feb. 2, 1905	265	130
Letter, Cumming to Comptroller General, Feb. 10, 1905	265	130
Letter, Comptroller General to T. K. Scott	265	131
Letter, Scott to Comptroller General	266	131
Affidavit of Joseph M. Terrell	266	131
Wm. A. Wright	267	131
Charles S. Bohler	267	131
A. P. Stewart	268	132
W. J. Steed	268	132
T. M. Armistead	269	132
Wm. A. Wright	269	132

	Original.	Print.
Affidavit of Wm. A. Wright	271	133
Paul D. Langdon	275	135
Opinion of Attorney General Hart	276	135
Testimony of Wm. A. Wright	278	136
Judge's certificate to brief of evidence	287	140
Clerk's certificate to record from superior court	287	140
Opinion	289	141
Judgment	339	162
Opinion at October term, 1905	340	163
Clerk's certificate	399	189

1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law, or equity of the said State, in which a decision could be had in the said suit between the Georgia Rail Road and Banking Company, Plaintiff in Error, and William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County, Defendants in Error, wherein was drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Plaintiff in Error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same

2 in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of August, in the year of our Lord One thousand Nine hundred and six.

[Seal U. S. Circuit Court, N. D. Georgia.]

O. C. FULLER,
Clerk United States Circuit Court for the Northern District of Georgia.

Allowed by
WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

August 1, 1906.

Filed in office August 1, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

3 In the Supreme Court of the State of Georgia, March Term, 1906. In Equity.

GEORGIA RAIL ROAD AND BANKING COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

This 1st day of August, 1906, came the Plaintiff in Error, Georgia Rail Road and Banking Company by its Attorneys and filed herein and presented to this Court its petition praying for the allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of Georgia intended to be urged by it; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration hereof this Court, being the Court rendering the judgment or passing the decree complained of, and the undersigned as Chief Justice of said Court, does hereby allow the Writ of Error, the plaintiff giving and filing herewith an approved bond, according to law, in the sum of $500.00.

In witness whereof this order allowing said Writ of Error is signed by William H. Fish, Chief Justice of the said Supreme Court of the State of Georgia, this 1st day of August, in the year of our Lord Nineteen hundred and six.

WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office August 1, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

4 UNITED STATES OF AMERICA, *ss:*

To William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, Sheriff of Fulton County, Georgai, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of Georgia, wherein the Georgia Rail Road and Banking Company is Plaintiff in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Fish, Chief Justice of the Supreme Court of Georgia, this 1st day of August, in the year of our Lord One thousand nine hundred and six.

WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

Service acknowledged of a copy of the within Citation, and all other and further notice and service waived, this 1st day of August, Nineteen Hundred and Six.

JNO. C. HART,
BOYKIN WRIGHT,
Attorney- for William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County, Defendants in Error.

Filed in office August 1, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

5 In the Supreme Court of the State of Georgia, March Term, 1906. In Equity.

GEORGIA RAILROAD AND BANKING COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Georgia.

The petition of Georgia Railroad and Banking Company, by Joseph B. Cumming, Alex. C. King and Joseph R. Lamar, its attorneys, shows:

That on the 24th day of May, 1906, the Supreme Court of the State of Georgia made and entered a final judgment herein in favor of the Defendants, William A. Wright, Comptroller General, and John W. Nelms, Sheriff of Fulton County, and against the Georgia Railroad and Banking Company in which judgment, and the proceedings held prior thereto in this cause, certain errors were committed, to the prejudice of this petitioner, the Georgia Railroad and Banking Company, all of which more in detail, appear from the Assignment of Errors, which is filed with this petition.

The Georgia Railroad and Banking Company further shows that in this suit there was drawn in question the validity of a statute of, or authority exercised under, the State of Georgia, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; and in said suit the said Georgia Railroad and Banking Company specially set up and claimed a title, right, privilege and immunity under the Constitution of the United States, and the decision was against
6 the title, right, privilege and immunity specially set up and claimed under such Constitution, and that therein a manifest error hath happened to the prejudice of the Georgia Railroad and Banking Company.

Petitioner further shows that the said Supreme Court of the State of Georgia is the highest Court of the said State of Georgia

in which a decision in this suit and in this matter could be had.

Wherefore, the Georgia Railroad and Banking Company prays that a Writ of Error may issue in this behalf from the Supreme Court of the United States to the Supreme Court of the State of Georgia for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to the said Supreme Court of the United States.

This August 1st, 1906.

JOS. B. CUMMING,
ALEX. C. KING,
J. R. LAMAR,
Attorneys for Petitioner.

Filed in office Aug. 1, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

7 Supreme Court of Georgia.

THE GEORGIA RAILROAD AND BANKING COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

Error from the Supreme Court of Georgia.

Know all men by these presents The Georgia Railroad and Banking Company, as Principal, and Rufus H. Brown as security, are held and firmly bound unto the said William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County, Defendants in Error, in the sum of Five Hundred Dollars, to be paid to the said William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County: For which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our successors, heirs, administrators, executors and assigns firmly by these Presents.

Sealed with our seals, and dated this 1st day of August 1906.

Whereas, the above named The Georgia Railroad and Banking Company has prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Supreme Court of Georgia.

Now, therefore, the condition of this obligation is such that if the above named The Georgia Railroad and Banking Company shall prosecute the said Writ of Error to effect, and answer all costs should it fail to make good its plea, then this obliaation to be void, otherwise to remain in full force and virtue.

THE GEORGIA RAILROAD AND BANKING COMPANY,
By JACOB PHINIZY, *Its President.*

8 Attest:
[SEAL.] C. G. GOODRICH, *Cashier.*
RUFUS H. BROWN, *Security.* [L. S.]

Signed, sealed and delivered in presence of us:
[SEAL.] WM. C. GIBSON,
SAM'L MARTIN,
Notary Public, Richmond County, Georgia.

Bond approved August 1, 1906.
WM. H. FISH,
Chief Justice of the Supreme Court of Georgia.

Filed in office Aug. 1, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

9 In the Supreme Court of the State of Georgia, March Term, 1906. In Equity.

THE GEORGIA RAILROAD AND BANKING COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

Assignment of Errors.

The Georgia Railroad and Banking Company, in connection with its petition in the above stated cause for a Writ of Eror, makes the following assignment of errors which it avers occurred upon the trial of the cause and in the judgment of the Supreme Court of Georgia.

The plaintiff in Error, Georgia Railroad and Banking Company, assigning error, says:

That in the record and proceedings in the aforesaid cause, and in the judgment of the Supreme Court of Georgia there is manifest error in this:

First. That the Supreme Court of Georgia erred in affirming the judgment of the Court below, to wit: the Superior Court of Fulton County, Georgia, in which a judgment and decree was entered for the Defendants against the Plaintiff, because said judgment and decree denies to plaintiff the equal protection of the laws and takes its property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

Second. That the Supreme Court of Georgia erred in affirming the judgment of the Court below in refusing to grant a new trial to this Plaintiff, and overruling the motion of this plaintiff for a new trial, because said judgment denies to the plaintiff the
10 equal protection of the laws and takes the property of plaintiff without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

Third. That the Supreme Court of Georgia erred in affirming the judgment and decree in this case decreeing that the tax executions sought to be enjoined should proceed. The error being that each and every execution in favor of the State against the Georgia

Railroad and Banking Company for the years 1895 to 1902, inclusive, should have been perpetually enjoined by said decree as prayed for by the Georgia Railroad and Banking Company; Because said executions issued without due process of law, and take plaintiff's property without due process of law, and deny to it the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Fourth. Because the Supreme Court of Georgia erred in not adjudging that the said Superior Court of Fulton County should have decreed that the said executions were void because based on assessments which had been made without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fifth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because the assessment of back taxes on property omitted from the return of a prior year is an act judicial in its nature, and the tax payer is entitled to due process of law in the assessment of such back taxes, with notice of the time and place of making such assessment, and the right and opportunity to be heard on the value of said property. Plaintiff alleges that the assessments involved in this case were each made without due process of law, and are void because made in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Sixth. Because the Supreme Court of Georgia erred in affirming the said judgment and decree of the Court below, for that said decree was contrary to law, because, on the several dates of said as-
11 sessments, there was no law or statute of force in the State of Georgia which afforded petitioner due process of law in the assessment of back taxes on property omitted from prior returns; that each of said assessments of taxes against petitioner on Western Railway of Alabama stock are null and void because issued without due process of law, in violation of the Constitution of the United States.

Seventh. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because there is no law or statute of force in the State of Georgia, which, before or after the making of said assessments, or at the time of making said assessments, afforded petitioner process of law or the right or opportunity to be heard as to its liability to said tax, or as to the valuation of the stock, and that the assessments thus made by the Comptroller General seek to deprive petitioner of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States; and the Court erred in affirming the judgment that such executions on said void assessments should proceed.

Eighth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because the law of the State of Georgia, as contained in Sections 812, 813, 814, 847, 855, 874, 879, 949 of Volume I of the Code of Georgia of 1895, and the Acts of 1813, 1861 and 1804, in so far as they purport to authorize the assessment and valuation for taxation of prop-

erty omitted from returns in prior years, is unconstitutional, null and void, and contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that the said sections of said code and the Acts of the General Assembly of the States in that the said sections of said code and the Acts of the General Assembly of the State of Georgia fail to afford the tax payer an opportunity to be heard on the question of the value of property omitted from the tax returns of prior years.

Ninth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because plaintiff alleges it appears from the record in said case that
12 for the years 1895 to 1902, petitioner in good faith made its tax returns for each of said years; that the stock of the Western Railway of Alabama was not omitted from said returns or either of them with intent to conceal petitioner's interest in said stock or to escape taxation thereon, but that said stock was omitted in the honest belief and in reliance upon the universal practice of the tax payers and taxing officers that the same was not taxable; that said *bona fide* returns were duly accepted by the Comptroller General, and for said Comptroller without process of law and without the right of opportunity to petitioner to be heard and to offer evidence as to the value of said stock for each of said years, to issue assessments for each of the years from 1895 to 1902, and to back tax petitioner on said stock without the right to be heard on the question of the valuation thereof is to deprive petitioner of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and the Court erred in not enjoining said executions.

Tenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because there is no law of force which affords petitioner the right or opportunity to be heard on the assessment of back taxes on omitted property; that by the universal practice foreign stock was treated as non-taxable, and that a new construction of the law and a new practice of the taxing department should not be given retroactive effect; but should be prospective only, and that the assessment of taxes on said foreign stock for the years when the same was not treated or regarded as taxable without affording petitioner the right and opportunity to be heard is unreasonable, arbitrary and unjust and takes from petitioner its property without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

Eleventh. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because on the evidence in said case to be found in the ap-
13 proved brief of evidence, made part of the record in this case and here referred to, Plaintiff says that said assessments were issued without process of law, without a hearing, and without the opportunity to petitioner to be heard on the question of value of said stock and without notice of the time and place when said assessments would be made, and the assessments and each of them are void because issued without due process of law, because petitioner was

not given a day in Court or an opportunity to be heard as to the value of the Western Railway of Alabama stock, and that said void assessments are sought to be used to deprive petitioner of its property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States, and the Court erred in not adjudging that the assessments should be cancelled and the executions issued thereon perpetually enjoined.

Twelfth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because plaintiff in error insists that the pleadings and the admissions of the defendants show that the holder of no foreign stock had been taxed in Georgia except petitioner and the Central of Georgia Railway Company, who together own the stock of the Western Railway of Alabama; that the taxation of plaintiff in error on foreign stock for years 1895 to 1902 and the failure to tax the holder of any foreign stock for the same period is harmful discrimination against the petitioner in the administration of the law, and denies to petitioner the equal protection of the law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Thirteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because plaintiff in error insists that the record shows that all other property in the State is returned by the tax payer at two-thirds of its market value, and that such returns on such two-thirds valuation is habitually, knowingly and intentionally accepted by the taxing officers and that where assessments are made by the Comptroller
14 General or State Boards of Arbitration he and they habitually, knowingly and intentionally assessed such property for taxation at approximately two-thirds of its market value, while the said Comptroller General having assessed petitioner's stock at the full capitalization value, made no reduction to equalize such valuation and assessment with the other property in the State, and that in assessing petitioner's stock without making a reduction allowed on other property the Comptroller General discriminated against petitioner to its injury and that such action on the part of the Comptroller and the assessment consequent thereon denied to the petitioner the equal protection of the law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fourteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because plaintiff insists that the record in said case shows the other property in the State of Georgia is not assessed beyond its market value, while the stock of petitioner in the Western Railway of Alabama was assessed by the Comptroller and taxed to your petitioner at at least seventy-five per cent. above its market value, whereby petitioner was denied the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. That the judgment of said Suprem- Court affirming said judgment and decree of said Superior Court was error because plaintiff insists it appears from the record that the other property

in the State is habitually, knowingly, and intentionally accepted and assessed by taxing officers of the State at at least one-third below its fair market value, while the shares of petitioner in the Western Railway of Alabama were assessed and taxed by the Comptroller General for each of the years at least seventy-five per cent. above its market value, whereby petitioner was denied the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

15 Sixteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because plaintiff insists that it appears from the record that the Comptroller General in valuing and assessing railroad property for taxation adopted the method of capitalizing net earnings at six per cent. and of deducting therefrom approximately one-third of the value thus found for the purpose of taxation; also, that while the Comptroller adopted the method of capitalizing the net earnings of the Western Railway of Alabama for each and all of the years at six per cent. for the purpose of determining the value of the Western Railway of Alabama, and deducted the bonded indebtedness for the purposes of finding the value of the stock, yet, after finding the value of the stock by such method the Comptroller General made no reduction of one-third or any other sum from the valuation thus found; but assessed said stock for taxation at said valuation thus found without any deduction whatever; that in so doing, the Comptroller knowingly and intentionally discriminated against petitioner, and, in the administration of the laws denied the petitioner the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Seventeenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, that the said Supreme Court of Georgia having decided that the decision of said Supreme Court rendered in the case of Wright, Comptroller General *v.* Southwestern Railroad reported in 64th Ga. p. 783,-799, was the law of this State at the time of its rendition and remained the law of this State and was not altered by the adoption of the Constitution of 1877, and was binding upon said Supreme Court as the unanimous decision of the said Court until reversed by a full bench, and said decision fixing the situs of shares of stock in foreign railroad companies for purposes of taxation as without the

16 State of Georgia upon the ground that the same were but representatives of the physical properties of said corporations located outside of said State, it was not competent for the Legislature of Georgia by a legislative enactment to undertake to fix the situs of the said shares of stock, or to tax the same, and such attempt at taxation was a taxation of property beyond the limits of the State of Georgia and was contrary to the Constitution of the United States and to the Fourteenth Amendment thereof, and was the taking of property without due process of law.

Wherefore, the said Georgia Railroad and Banking Company, Plaintiff in Error herein, prays that the judgment of the Supreme Court of the State of Georgia in favor of the defendants, William A. Wright, Comptroller General of Georgia and John W. Nelms, Sheriff

of Fulton County, Georgia, and against this Plaintiff, the Georgia Railroad and Banking Company, may be reversed.

August 1st, 1906.

JOS. B. CUMMING,
ALEX. C. KING,
JOSEPH R. LAMAR,
Attorneys for the Georgia Railroad & Banking Co.

Filed in office Aug. 1, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

17 STATE OF GEORGIA, *Fulton County:*

Be it remembered that on January 30, 1906, during the January Term, 1906, of the superior court of Fulton County, before his Honor John T. Pendleton, Judge of said court, then and there presiding, there came on to be heard the case of the Georgia Railroad & Banking Company against William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, sheriff of Fulton County—the same being an Equitable Petition brought by the Georgia Railroad & Banking Company against said defendants to cancel back tax assessments issued February 7th, 1905, by the said Comptroller General for taxes for each of the years 1895 to 1904 on fifteen thousand shares of stock of the Western Railway of Alabama and to enjoin each of the executions issued on said assessments against the Georgia Railroad & Banking Company for the years aforesaid.

The defendants having withdrawn their demurrers, the case by consent of parties was heard upon the merits by the Judge without the intervention of a jury by virtue of an order dated January 30th, 1906, to be found in the record hereof.

By consent of parties the affidavits of certain witnesses were used in lieu of having such witnesses give their testimony by depositions or in open court, and with the same effect as if

18 said testimony had been given in open court.

The Georgia Railroad & Banking Company introduced certain tables, financial reports, the value of other railroads and the assessments for taxes thereon, and offered the testimony of witnesses and other evidence for the purpose of showing that the stock of the Western Railway of Alabama had been assessed by the Comptroller General for each of the years 1895 to 1904 grossly in excess of its value, and grossly in excess of the valuation put by the Comptroller General and taxing officers upon other property in the state, with the result of harmful discrimination against plaintiff in error, and with the result of denying to plaintiff in error the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States—the material portion of such testimony being found in an approved brief of the evidence made a part of the record and which is here referred to.

During the progress of the trial defendants, on January 30,

1906, presented an amended answer. The Georgia Railroad & Banking Company objected to the allowance of the prayer contained in paragraoh 6 of said amended answer, and moved to strike the same. Said paragraph with the prayer therein being in the following words:—

"6. Answering paragraph 6 defendants deny that the list thereto attached marked Exhibit "B" in which petitioner alleges
19 that the valuation placed therein on the Western Railway of Alabama — is the true market value of said stock. But on the contrary the true market value of said stock is as assessed by the Comptroller General, and prays that the court may so find and decree."

Plaintiff in error urged as cause why said prayer should be disallowed and stricken that there was no jurisdiction in the superior court of Fulton County to assess the said stock for taxation, nor revalue said stock for the purpose of taxation, and that the prayer was vague and indefinite, but sought to invoke relief which the court had no jurisdiction to grant.

The court ruled that it could not in this cause decide or fix the value of said stock for the purpose of determining an amount for which executions for taxes should proceed, but that he would hear evidence with a view of determining whether said assessments were excessive, and held that the said paragraph in the amended answer with said prayer was proper to be allowed and overruled said objection and refused to strike said prayer.

To which order and judgment the Georgia Railroad & Banking Company then and there excepted and now excepts and assigns said refusal to disallow said prayer and to strike the same as error.

1. The error being that said prayer was vague and indefinite, and the court had no jurisdiction to render a decree finding the value of said stock.

20 The cause proceeded and at the conclusion of the evidence and after agrument by counsel the court made findings of fact and entered a final decree on January 30, 1906. Said findings and decree *is* to be found in the record and *is* here referred to. In and by said final decree the court ordered and directed that

"The *fi. fas.* for taxes in favor of the State against the Georgia Railroad & Banking Company for the years 1895 to 1904, inclusive, proceed."

To which decree the Georgia Railroad & Banking Company then and there excepted and now excepts and specifies said decree as a judgment in said case which is in this bill of exceptions complained of, and says:—

2. That the court as a matter of law erred in decreeing that said executions should proceed. The error being that each and every execution in favor of the State against the Georgia Railroad & Banking Company for the years 1895 to 1904 inclusive should have been perpetually enjoined by said decree as prayed by the Georgia Railroad & Banking Company.

For more particular assignment of error in said decree, the plaintiff in error says that the court erred in rendering said decree in

favor of the defendant, Defendant in Error herein, and in decreeing that the tax *fi. fas.* should proceed:—

21 3. Because as matter of law the court should have decreed that each of said executions for each of the years 1895 to 1904 inclusive were void because based on assessments which had been made without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

4. Said decree was and is contrary to law because on February 7, 1905, there was no law or statute of force in the state of Georgia which afforded petitioner due process of law in the assessment of back taxes on property omitted from prior returns; that each of said assessments for taxes against petitioner on Western Railway of Alabama stock are null and void because issued without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, and the court erred in not decreeing that the executions based on said assessments should be perpetually enjoined.

5. Because there is no law or statute of force in the state of Georgia, and on February 7, 1905, there was no law or statute of force in the state of Georgia which before or after the making of said assessments, or at the time of making said assessments afforded petitioner process of law or the right or opportunity to be heard as to its liability to said tax, or as to the valuation of the stock, and that the assessment thus made by the Comptroller General seek- to deprive petitioner of its property without due process of law,

22 contrary to the Fourteenth Amendment to the Constitution of the United States; and the court erred in decreeing that such executions on said void assessments should proceed.

6. Because the law of the State of Georgia, as contained in sections 812, 813, 814, 847, 855, 874, 879, 949 of Volume I of the Code of Georgia of 1895, and the Acts of 1813, 1861 and 1804 in so far as they purport to authorize the assessment and valuation for taxation of property omitted from returns in prior years, is unconstitutional, null and void and contrary to the Fourteenth Amendment to the Constitution of the United States in that the said sections of said Code and the Acts of the General Assembly of the State of Georgia fail to afford the taxpayer due process of law, or the right and opportunity to be heard on the question of the value of property omitted from the tax returns of prior years.

7. That the said decree was error as matter of law because the assessment of back taxes on property omitted from the returns of a prior year is an act judicial in its nature, and the tax payer is entitled to due process of law in the assessment of such back taxes, with notice of time and place of making such assessment and the right and opportunity to be heard on the value of said property. Plaintiff in error contends that the assessments involved in this case were each made without such opportunity and right to be heard and without due process of law and are void because made in violation of the provision of the 14th Amendment to the Con-

23 stitution of the United States.

8. That said decree was error because plaintiff says that it

appears from the pleadings in said case that for the years 1895 to 1904 it in good faith made its tax return; that the said stock of the Western Railway of Alabama was not omitted from said returns with intent to conceal its ownership or to escape taxes thereon, but was omitted in the honest belief, and in reliance on the universal practice of tax payers and taxing officers that the same was not taxable. That said *bona fide* returns were duly accepted by the Comptroller and for said Comptroller to back tax petitioner on said stock without the right for it to be heard on the valuation thereof is to deprive petitioner of its property without due process of law, contrary to the provisions of the 14th amendment to the Constitution of the United States.

9. Because there is, and has been, no law of force in the State of Georgia that afforded petitioner the right or opportunity to be heard on the assessment of back taxes on omitted property; that by the universal practice foreign stock was treated as nontaxable, and that a new construction of the law and a new practice of the taxing department should not be given retroactive effect, but should be prospective only, and that the assessment of taxes on said foreign stock for the years when the same was not treated or regarded as taxable without affording petitioner the right and opportunity
24 to be heard is unreasonable, arbitrary and unjust and takes from petitioner its property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

10. Plaintiff contends that said assessments were each void because petitioner was not given its day in court, and there was no law fixing the time and place when said assessments should be made, and no law providing for process upon petitioner in the assessment of back taxes on omitted property, and no law affording petitioner the right or opportunity to be heard on the assessment, and no law affording petitioner the right to offer evidence on the valuation of said stock, or to be heard on the valuation thereof; and said assessments are each void because issued without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

11. Plaintiff in error further assigns that the said decree of January 30, 1906, was error because it appeared from the pleadings that the holders of domestic stock were not taxed thereon for the years 1895 to the year 1904 nor have the holders of domestic stock been back*ed* taxed thereon for said years. That to back tax petitioner as the holder of foreign stock for said years and to fail to tax or back tax the holders of domestic stock for said years, when foreign and domestic stock were both alike made taxable by the
25 second section of the Act approved October 20th, 1885, providing for the return of property for taxation, is contrary to Art. VII, Sec. II, Par. I, of the Constitution of Georgia, which provides that all taxation shall be uniform upon the same class of subjects, and is further contrary to Art. I, Sec. I, Par. II of the constitution of Georgia, which provides that protection to property shall be impartial and complete, and that the said decree was error

because the court did not therein cancel the assessments and perpetually enjoin the executions issued thereon.

12. Plaintiff assigns that said decree was error because, it insists, that the record shows that all other property in this state is and was returned by taxpayers at two-third of its market value; that such returns on said 2/3 valuation is knowingly and intentionally accepted by the taxing officers, and that where assessments are made by the Comptroller General or State Boards of Arbitration he and they knowingly and intentionally valued and assessed said property for taxation at approximately 2/3 of its market value, while the Comptroller assessed petitioner's stock at the full capitalization value, made no reduction to equalize such valuation and assessment with the other property in the state and that in assessing petitioner's stock without making the reduction allowed on other property the Comptroller General discriminated against the petitioner and denied it the equal protection of the law, contrary to the 14th Amendment to the Constitution of the United States.

26 13. Plaintiff in error assigns as matter of law that said decree was error; because plaintiff insists that it appears from the pleadings that the holder of no foreign stock has been taxed in Georgia except petitioner and the Central of Georgia Railway (owning stock of the Western of Alabama Railway) and that the taxation of plaintiff on foreign stock for the years 1895 to 1904, and the failure to tax the holder of any other foreign stock for the same period was harmful discrimination against petitioner in the administration of the law, and denies to petitioner the equal protection of the law, contrary to the 14th Amendment to the Constitution of the United States.

14. That said decree was error because plaintiff insists that it appears from the record that the other property in the state is not assessed beyond its market value, while the stock of petitioner is assessed by the Comptroller and taxed to petitioner at at least 75% above its market value, whereby petitioner is denied the equal protection of the law, in violation of the 14th Amendment to the Constitution of the United States.

15. That said decree was error; because, plaintiff in error insists, that it appears from the record that the other property in this state was knowingly and intentionally returned by taxpayers and accepted and assessed by the taxing officers of the state at at least 1/3 below its fair market value, while the shares of the petitioner were

27 assessed and taxed by the Comptroller to petitioner at at least 75 per cent. above its market value, whereby petitioner is denied the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

16. That said decree was error; because, plaintiff insists, that it appears from the record that the Comptroller General and State Boards of Arbitration in valuing and assessing railroad property for taxation adopted the method of capitalizing net earnings at 6 per cent. and deducting from the figures thus reached, approximately 1/3 of the value thus found for the purpose of determining the valuation of railroads for the purpose of taxation; that the Comptroller adopted the method of capitalizing the net earnings of the Western

Railway of Alabama for each year at six per cent. and deducted the bonded indebtedness on the property for the purpose of finding the value of the stock. Yet after finding the value of the stock by such method the Comptroller made no reduction of one-third or any other sum from the valuation thus arbitrarily arrived at but assessed said stock for taxation at said valuation without any deduction whatever. That in so doing the Comptroller knowing*ing* and intentionally discriminated against petitioner, and in the administration of the law denied the petitioner the due protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

28 17. Because the court erred in not enjoining said executions for the years 1895 to 1904 from proceeding for interest from the 20th day of December for each and every year for which the assessments were made and the executions issued. The error being that interest did not run and under the law could not run except from the date of assessment, and the date when the amount of taxes had been ascertained and an assessment made.

18. Because the court erred in allowing the executions to proceed for interest, it appearing that the Georgia Railroad & Banking Company was on the 16th day of April, 1902, enjoined from making return or paying taxes on said stock of the Western Railway of Alabama, and that said injunction was not dissolved until the 10th day of January, 1905; that to charge petitioner with interest during the time it was enjoined was contrary to law, and the court erred in not decreeing that interest on said executions should be abated for said period.

19. Because the court erred in not enjoining the executions for the taxes for the years 1902, 1903 and 1904, for that the assessments were made prematurely and the executions based on said assessments are void for that Plaintiff insists that it appears that the petitioner was enjoined from making any returns or in any way recognizing the liability of said stock for taxation, and the Comptroller General was enjoined from taking any steps to enforce the collection

29 of taxes on said stock from the 19th day of April, 1902, to the 10th day of January, 1905, by a decree of the Circuit Court of the United States for the Northern District of Georgia, in the case of the Louisville & Nashville Railroad Company and Atlantic Coast Line Railroad Company against William A. Wright and the Georgia Railroad & Banking Company, which said decree granting said injunction appears in the record in this cause; and that the said Comptroller General had been enjoined by the orders of this Honorable Court in this case from doing any act for the collection of the taxes claimed, or for the enforcement of the executions issued for the same from the 4th day of March, 1905, to the 22nd day of January, 1906. Petitioner insists that during all of said period of time from April 19th, 1902 to January 10th, 1905, and from March 4th, 1905 to January 22nd, 1906, that it was not required to make, nor was said Comptroller General authorized to receive any returns for taxation upon said shares of stock of the Western Railway of Alabama, and that said time should not be computed in determining whether or not this petitioner is in default, and that petitioner had

and has the same time exclusive of said period during which said injunctions were of force, after the same were finally dissolved, in which to return said shares for taxation for each of said years 1902, 1903 and 1904 that he would have had in said respective years to make said tax returns had such injunctions or restraining
30 orders not been issued: that said time had not elapsed when the said assessments upon which the executions are proceeding in this case were made by said Comptroller General, nor had it elapsed when said executions were issued.

20. Because the said decree is contrary to law, and under the pleadings in said case and the law applicable thereto the court should have enjoined the executions for the years 1895 to 1904 on the ground that the said executions were void.

On the 2nd of February, 1906, during the January term, 1906, of the Superior Court of Fulton county, said Georgia Railroad & Banking Company duly made and filed its motion for new trial, which motion was approved by the court, the court having likewise approved the brief of the evidence which said brief contains all the material portions of the evidence introduced in said case, and all the evidence material to a clear understanding of the errors complained of,—which said brief is likewise filed and made a part of the record.

Said motion for a new trial was duly served upon the defendants who acknowledged service and waived rule *nisi*. After argument by counsel for plaintiff and the defendants the Judge of the superior court of said county on February 2nd, 1906, and during the January term, 1906, of said court, overruled said motion and refused to grant a new trial.

To which judgment overruling the motion and refusing a
31 new trial the Georgia Railroad & Banking Company then and there excepted and now excepts, and specifies said judgment refusing a new trial as a judgment in said case complained of herein, and assigns the said judgment as error, and says:

22. That the court erred in overruling said motion for new trial on each and every ground thereof.

Plaintiff specifies as material to a clear understanding of the errors complained of in this bill of exceptions:

1. The original petition, with the amendments to the petition allowed and filed April 25, 1905, with the exhibits thereto; the amendment to the petition allowed and filed May 18, 1905, with the exhibit thereto, and the amendment to the petition, allowed and filed January 30, 1906.

3. The original answer of the defendants; the amended answer allowed and filed April 26, 1905; the amended answer allowed and filed May 24, 1905; the amended answer allowed and filed January 30, 1906.

4. The consent order dated January 30, 1906, submitting said case to the Judge without the intervention of a jury.

5. The findings of fact and the final decree rendered, and dated January 30, 1906.

6. The brief of the evidence approved by the Judge and made a

part of the record in this case, and filed February 2, 1906, and to be sent up by the Clerk.

32 7. Motion for new trial with the entries thereon.

8. The order overruling the motion for new trial.

And now during the January term, 1906, of Fulton Superior Court, and within thirty days from the rendition of the several rulings and decree excepted to, and within thirty days from the making of the order refusing a new trial in said case, comes the Georgia Railroad & Banking Company and tenders this, its bill of exceptions, and prays that the same may be signed and certified, that the errors complained of may be considered and corrected. This February 2nd, 1906.

JOS. B. & BRYAN CUMMING,
ALEX C. KING,
SANDERS McDANIEL,
JOSEPH R. LAMAR,
Attorneys for The Georgia Railroad & Banking Company.

P. O. Address of Counsel for Plaintiff in Error:
Jos. B. & Bryan Cumming, Augusta, Ga.
Alex C. King, Atlanta, Ga.
Sanders McDaniel, Atlanta, Ga.
Jos. R. Lamar, Augusta, Ga.

STATE OF GEORGIA, *Fulton County:*

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are

33 in this bill of exceptions specified and certify the same as such, and cause the same to be transmitted to the March Term, 1906, of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This February 2nd, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

Due and legal service of the within and foregoing bill of exceptions and certificate is acknowledged; copy and all further service waived.

This second day of February, 1906.

JNO. C. HART,
Attorney General.
BOYKIN WRIGHT,
HOKE SMITH,
Attorneys for Defendants.
WILLIAM A. WRIGHT,
Comptroller General, and
JOHN W. NELMS,
Sheriff of Fulton County.

Filed in office February 2nd, 1906.
ARNOLD BROYLES, *Clerk.*
3—384

34 STATE OF GEORGIA, *County of Fulton:*

I hereby certify that the foregoing bill of Exceptions hereunto attached is the true original Bill of Exceptions, filed in this office, in the case of Georgia Railroad & Banking Company, Plaintiff in Error, *vs.* William A. Wright, Comptroller General, *et al.*, Defendant in Error, and that a copy thereof has been made and is on file in this office.

Witness my hand and seal of said Court.

This the 17th day of February, 1906.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court, Fulton County, Ga.

Filed in office Feb. 2nd, 1906.
ARNOLD BROYLES, *Clerk.*

Filed in office Feb. 17, 1906.
LOGAN BLECKLEY,
D. C. S. C. Ga.

35 GEORGIA RAILROAD & BANKING CO., Plaintiff in Error,
vs
WILLIAM A. WRIGHT, Comptroller General, ET AL., Defendants in Error.

36 (*Original Petition.*)

Fulton Superior Court, Fall Term, 1905.

12418.

GEORGIA RAILROAD & BANKING CO.
vs.
WM. A. WRIGHT, Comptroller General, ET AL.

STATE OF GEORGIA, *Fulton County:*

To the honorable the superior court of said county:

The Petition of The Georgia Railroad and Banking Company complains against William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, Sheriff of Fulton County, and both of said County, and respectfully shows:

(1.) Your petitioner is a corporation created by an Act of the Legislature of said State approved December 21, 1833, and existing under said Act and under various other Acts of the Legislature amendatory thereof.

(2.) Petitioner is the owner of a Railroad, whose main line runs from the City of Augusta to the City of Atlanta, both in said State, and of several branch lines of Railroad. Petitioner is also the owner of nearly one half of the capital stock of The
37 Atlanta and West Point Railroad Company, also a corporation under the laws of said State, having a railroad which

connects with Petitioner's main railroad at Atlanta and terminates at West Point in said State.

(3.) Petitioner is also the owner, as hereinafter qualified and explained, of a half interest in The Western Railway of Alabama, which connects with said Atlanta and West Point Railroad at the Western terminus of the latter,—which railway is situate in the State of Alabama, extending from the town of West Point, in the county of Troup in the State of Georgia, to Selma in the State of Alabama.

(4.) All of said holdings of Petitioner outside of, and in addition to, its original railroad and its branches, have been acquired under various acts of the Legislature of the State of Georgia amendatory of Petitioner's Charter—which Acts are public laws of said State. The Act, under which Petitioner acquired said half interest in The Western Railway of Alabama approved February 27, 1875, provided that "The Georgia Railroad and Banking Company and The Central Railroad and Banking Company be, and they are hereby authorized to become purchasers of said Western Railroad of Alabama, its property and franchises, or any part thereof, at any sale *of* sales of the same that may be had in Georgia or Alabama or both, and may hold the title to the same under their existing corporate capacities, or may acquire and hold stock in the present Western Railroad Company of Alabama, or any new corporation that shall be organized to take the place of the same."

38 (5.) In pursuance of the provisions of said Act Petitioner, electing to act under that alternative provision which authorized it to hold the title in its existing corporate capacity became on the first day of September 1875 the purchaser of an undivided one-half interest and ownership in fee of the railroad and franchises of The Western Railroad of Alabama *Company*, when they were sold under a decree of The Chancery Court of Montgomery County, Alabama, in the suit of Norris and Lowry *versus* The Western Railroad of Alabama and others. The Central Railroad and Banking Company of Georgia in like manner became the purchaser of the other one-half undivided interest and ownership in fee simple of said railroad and franchises; and said two purchasers received fee simple deeds each for an undivided half interest as aforesaid. Said two owners continued to hold said property as tenants in common under said deeds until the — day of —— 1882.

(6.) While said railroad and franchises were thus held by their two owners as tenants in common, Your Petitioner made a Lease, to-wit: May 7, 1881 to William M. Wadley and his assigns of all its railroad properties of every description for a term of 99 years from April 1, 1881. Said instrument of Lease is voluminous and is not annexed to this Petition as an Exhibit, but it will be shown to the Court. That part of it, by which Petitioner's interest in said Western Railroad of Alabama and franchises was leased to said

39 Wadley and his assigns, is as follows:

"And the party of the first part also assigns by these Presents to the party of the second part and his assigns all the right of ownership, management, control and use of the Western

Railroad of Alabama which the party of the first part now had or is entitled to."

(7.) The said William M. Wadley immediately took possession of said half interest, and he and his assigns have remained in possession thereof ever since and have, to the exclusion of Petitioner, controlled, managed, and used said Railroad and its franchises and received all the gross earnings of said interest, have paid one half of the operating expenses, taxes and other fixed charges; and have retained for themselves a half of the net earnings, when there were any net earnings.

(8.) At the time of said conveyance to Wadley and his assigns and at all times before, Petitioner had no property or interest in said Western Railroad of Alabama, which could be taxed under any law of the State of Georgia then existing or by any such law as now exists; and Petitioner has not acquired any new right or interest in said property since that time, and, under its aforesaid conveyance to Wadley and his assigns, could not. Petitioner has had in said property since said conveyance nothing except a reversionary right—the right to have it returned to Petitioner's possession April 1, 1980. Immediately, and for some time, after the said Lease, the evidence of this right existed only in the terms of the Lease itself.
40 Subsequently the evidence of this right has also existed in the form of a certificate of stock, as will be hereinafter set forth.

(9.) In the month of October 1882, Your Petitioner, acting in concert with its co-tenant in common, The Central Railroad and Banking Company of Georgia, and availing itself of the privilege granted by said Act of February 27, 1875, procured the incorporation of Petitioner and its co-tenant under the laws of the State of Alabama as The Western Railway of Alabama; and, with the coöperation of the assigns of said William M. Wadley, who were at that time The Louisville and Nashville Railroad Company and The Central Railroad and Banking Company of Georgia, made a deed of its aforesaid undivided one half interest in the Western Railroad of Alabama to said new corporation.

(10.) When said new corporation was created it was at first capitalized at $2,000,000; but in a few months thereafter, to-wit, March 13, 1883, and before any certificates of stock were issued, it being ascertained by the two owners and corporators that the property had cost them in the purchase money, in legal expenses and other legitimate outlays, three million one hundred and —— dollars, thirty thousand shares of stock of $100 per share were issued; and your petitioner received a certificate for fifteen thousand shares as the consideration of the deed aforesaid.

Extracts from Minutes of the Board of Directors relating to the facts stated in this and the next preceding paragraph, are
41 hereunto annexed marked Exhibit A—and the usual leave of reference prayed.

(11.) This transaction did not change Petitioner's substantial relation to the property in the slightest degree, and even in form this relation was practically entirely unchanged—For (first) by the Lease to Wadley, Petitioner had conveyed to him and his assigns

its half ownership of the railroad absolutely for 99 years, retaining only a reversionary interest in the same at the expiration of that period, or on the happening of sundry specified contingencies. During said period, Petitioner had neither interest in, nor control of, said property. (Second) The deed aforesaid from Petitioner to the corporation was made expressly subject to the Lease to Wadley; and the corporation, The Western Railway of Alabama, acquired under said Deed nothing except Petitioner's reversionary interest aforesaid. And (third) inasmuch as the control, as well as the beneficial ownership, of Petitioner's half interest in the railroad had been transferred to Wadley and his assigns, the spirit—and it is averred the letter also—of the Lease required Your petitioner to give to said assigns a Power of Attorney, irrevocable during the continuance of the Lease, to vote said 15000 shares—This was done immediately, and said power has ever since been, and now is, held and exercised by Petitioner's Lessees solely in their own behalf.

(12.) So that in said 15000 shares of stock Your Petitioner has nothing of any present value. They yield Petitioner no income and give Petitioner no voice in the control of the Railroad. Nor can Petitioner sell or pledge the same and thus derive some advantage from its so-called ownership. It could sell the whole interest, present and reversionary, in the stock only to its own Lessees; but they would give nothing for it except what the reversion 75 years hence may be worth, for the simple reason that they already have, under the lease aforesaid, all other elements of value, to-wit revenue and control. The interest, which Petitioner is free by law and contract to sell, to-wit the reversion, is, at this day—whatever it may become as the end of the Lease approaches—practically worthless for sale or pledge.

(13.) Your Petitioner shows that the Defendant William A. Wright, claiming to have authority for such action by virtue of being Comptroller General of the State of Georgia, has recently demanded from Your petitioner taxes on said fifteen thousand shares of stock for each of the years 1883 to 1904 inclusive, with interest on the alleged tax of each year respectively from December 20th, of the year at the rate of seven per centum per annum. A schedule of the taxes demanded hereunto annexed marked Exhibit B, shows that the aggregate of the principal of said taxes is One Hundred and twenty-five thousand nine hundred and seventy-four ($125,974) dollars. Upon the refusal of your Petitioner to pay said taxes for the reasons hereinafter fully set forth, said Defendant issued twenty two tax executions, aggregating said principal sum, one for each of said years; and put them in the hands of his co-defendant John W. Nelms; and said Defendant as Sheriff of said County of Fulton, has levied said executions on valuable property of Your Petitioner, and will sell the same, unless restrained by the order of this Honorable Court. One of the notices served by said Sheriff upon the tenant in possession, showing said levy and the property, levied on is hereunto annexed, marked Exhibit C.

(14.) Your petitioner avers that said Defendant William A. Wright in issuing said executions and each of them has acted wholly

without warrant of law and against law; and said executions are wholly illegal and invalid for the following reasons:

(A.) Said shares of stock are not taxable under the laws of Georgia.

(B.) Said shares of stock are not under the laws of Georgia property subject to be taxed within the territorial limits of the State; but are symbols of property not situated in the State of Georgia.

(C.) If there is any Statute of Georgia, which undertakes to tax said stock, said statute is unconstitutional, null and void under the Constitution of said State, in that such statute would classify these shares as taxable property, when under the laws of Georgia the
44 shares of stock in domestic corporations are held to be only representatives of property and are not taxable property in the hands of the shareholders; and to tax these shares when the shares of stock of railroads in the State are by law left untaxed, is to make an arbitrary classification of these shares as being taxable personal property in the hands of the holder; while like shares of the stock of domestic Railroad Companies are held to be taxable personal property in the hands of the holders of such shares.

(D.) For each and every year of the twenty two for which said defendant has issued executions as aforesaid, Petitioner has made returns of its property to the Comptroller General for taxation as required by law. In these returns or in any act or omission by Petitioner, there has been no attempt or purpose to conceal the fact of its ownership and the nature of its ownership of these shares. Petitioner's annual reports, printed, published and distributed to its thousands of stockholders in all parts of the State of Georgia, and at all times open to the Comptroller General of the State, have disclosed the status of these shares. They have not been included in Petitioner's Tax returns just as its several thousands of shares of The Atlanta and West Point Railroad Company have not been borne on said returns, viz., for the reason that it was the general understanding of all the people of the State, including its fiscal officials—and was, as Petitioner avers, and is, the law—that they were not tax-
45 able. Each and all of said Tax Returns were accepted by the Comptroller General of the State up to the year 1900—and Petitioner says that the laws of Georgia do not authorize the Comptroller General, after he has accepted a Tax Return, to go back and tax property, claimed to have been omitted.

(E.) If there is any law undertaking to authorize the Comptroller General to go back and make a new assessment after he has accepted a return, and to tax property claimed to have been omitted, such law is unconstitutional, null and void, in that it would deprive the taxpayer of his property without due process of law, as no provision is made in such law, by which the taxpayer can be heard and the assessment reviewed, either before the Comptroller General or an arbitration board or otherwise.

(F.) The valuation of said shares by the Comptroller General is grossly excessive—so much so as to deprive Petitioner of the equal protection of the laws, and also to be contrary to equity and good conscience. As hereinbefore shown, said shares are of no or very small present value. Under the tax laws of the State, if they are subject

to said laws—which Petitioner denies—they should be taxed at their fair value. Nevertheless, the defendant, said William A. Wright has put on them a valuation, which would be greatly in excess of their fair value, if they had—as they have not—in the hands of the shareholder the usual qualities of shares of stock, to-wit the right
46 to receive dividends and to participate in the management of the corporation. This has been done, too, when, as Petitioner charges, the property of the tax payers generally of the State is assessed for taxation at about sixty five per cent. of its fair value. This valuation is put upon these shares, when confessedly there is no statutory provision, by which the valuation can be reviewed. Petitioner must, therefore, have recourse to this Honorable Court, as in cases generally where the interposition of a Court of Equity is required to restrain acts which are against equity and good conscience.

(G.) Said Comptroller by said assessment also denies to Petitioner the equal protection of the law, contrary to the Constitution of the United States. Said Comptroller General has assessed the value of the stock, which is inferior to all debts of the said Western Railway of Alabama, at very much higher figure per mile than is assessed against the railroads and franchises returned to him, which are of equal or greater earning power and value with said Western Railroad of Alabama.

(H.) If said shares are taxable under the laws of Georgia—which Petitioner denies—there is no law authorizing the collection of interest on the tax from the time the tax became due. The interest on taxes, for which the law provides, is interest on the executions issued for the taxes—and this only. And Petitioner says that the only interest, for which in any event Petitioner can be held liable, is interest on a lawful and valid tax execution from the date
47 of the issue thereof.

(I.) Under the laws of Georgia, executions cannot lawfully issue for the collection of taxes, alleged to have become due and payable more than seven years before the date, at which the executions issued.

Wherefore petitioner prays:

(1.) That the Court will adjudge and decree that said Fifteen thousand shares of stock are not subject to taxation by the State of Georgia.

(2.) That the issue of the executions aforesaid is without warrant, of law and contrary to law, and that said executions be cancelled.

(3.) That the valuation of said shares is grossly excessive and against equity and good conscience, and that the collection of the same be enjoined.

(4.) That the interest of Petitioner in said shares represents only an interest in reversion at the termination of the estate created by the Lease aforesaid from Your Petitioner to William M. Wadley, and they are to be valued accordingly for taxation, if taxable at all.

(5.) That if any taxes are payable on said shares, said taxes do

not draw interest except from the date of valid executions issued for their collection.

(6.) That no executions can issue lawfully for the col-
48 lection of taxes, alleged to have become payable more than seven years before the issue of the executions.

(7.) That the Defendants William A. Wright, Comptroller General of the State of Georgia and John W. Nelms, Sheriff of the County of Fulton, be enjoined from doing any act for the enforcement of said executions, or any of them, or for the collection of the taxes claimed in said executions, or any party thereof.

(8.) That Petitioner may have such other and further relief as to the nature of Petitioner's case may be meet.

(9.) That process may issue requiring said Defendants and each of them to be and appear at the next term of this Honorable Court, answer to make to this Petition, but not under oath, discovery being expressly waived, and to stand to and abide the judgment and decree of the Court.

JOS. B. & BRYAN CUMMING,
KING, SPALDING & LITTLE,
SANDERS McDANIEL,
Petitioner's Attorneys.

STATE OF GEORGIA, *Richmond County:*

You, Jacob Phinizy, do solemnly swear:

That you are the President of The Georgia Railroad and
49 Banking Company, the Petitioner in the foregoing petition;

That you have read said Petition, and that those facts stated therein, of your own knowledge are true, and those stated as information and belief you verily believe to be true;

So help you God.

JACOB PHINIZY.

Sworn to and subscribed before me this 3rd day of March, 1905.
M. J. DICKS,
N. P., Richmond Co., Ga.

(EXHIBIT "A.")

Banking House of The Ga. Railroad & B'k'g Co.

AUGUSTA, GA., *October* 27, 1882.

A meeting of the Board of Directors of this Company was held this morning, commencing at 9.15 O'clock.

Present: C. H. Phinizy, President; and the following directors: Messrs. Alexander, Billups, Davison, Hickman, McDaniel, Phinizy, Reese, Speer and Stovall.

The President stated that he had called the meeting to consider the incorporation of The Western Railroad of Alabama.

After a very full discussion, the following preamble and Resolutions were unanimously adopted.

Whereas The Georgia Railroad and Banking Company and
50 The Central Railroad and Banking Company of Georgia became purchasers of The Western Railroad of Alabama at a sale made under the decree of the Chancery Court of Montgomery County, Alabama, in the case of Morris & Lowry *vs.* The Western Railroad of Alabama and others, and received the conveyance of the Register, executed under said decree, dated September 1, 1875, conveying all the franchises and property of said Western Railroad Company of Alabama, to which deed, recorded in Book 8, pages 479 and 480 of Montgomery County, Alabama, reference is made for a full description of said property;

And whereas the said purchasing companies have disposed of that part of said railroad known as the Columbus Branch, extending from Opelika, Alabama, to Columbus, Georgia, and have enjoyed said purchases and, operated the remainder of said railroad as joint owners through a General Manager appointed by them;

And whereas said companies have mutually agreed to make the required declaration and become incorporated under the laws of Alabama for the enjoyment and operation of the remainder of said property, by the name of The Western Railway of Alabama.

Now, Therefore, be it Resolved by the Board of Directors of The Georgia Railroad and Banking Company;

(1.) That the President, acting President or Chief Executive Officer of this Company be, and is hereby, authorized to carry into effect said incorporation for the formation of the Western
51 Railway of Alabama, and to make the necessary declaration concurrently with the Central Railroad & Banking Company of Georgia, on the part of this company, and to file or cause the same to be filed with the Secretary of State of Alabama; and he is also authorized to name and appoint any agent or attorney, who, when appointed, shall have all the authority and power hereby vested in him, in the premises, and shall also represent this Company in the selection of Directors and other officers in the organization of said Company or body politic.

(2.) That the number of shares of stock shall be 20,000 shares of $100 each, all paid up, and that this company and The Central Railroad & Banking Company of Georgia, shall each hold one-half thereof at the time of declaration.

(3.) That a conveyance be executed by this company to The Western Railway of Alabama of all its interest in the property acquired by said purchase and now held by it, as well as all of the property since acquired by this Company and its associates in said purchase for use in connection with the operation of said railroad, including everything in the hands of the General Manager thereof used in connection therewith or arising therefrom (excepting, however, the Branch of the said Western Railroad, known as the Columbus Branch, being the railroad extending from Opelika to Columbus, Georgia, which together with the depots and station houses and

other land of said Western Railroad lying along said Branch,
52 has been otherwise disposed of) and that the said conveyance be delivered as soon as the incorporation is completed by the filing of said declaration.

(4.) That this action is to be subordinate and conformable to the terms of the lease of the property of this company to William M. Wadley and is to be of force only after the assent in writing of the Lessee or the assignee or assignees of said lease has been obtained.

(5.) That the new incorporation hereby contemplated to be created shall have no power to alter, annul, modify or interfer- with the terms of the lease made by this Company to William M. Wadley, except with the consent, in writing, of the lessor, and this restriction shall be incorporated in the Charter to be granted.

MARCH 13, 1883.

Before Mr. Raoul's withdrawal he said that he was instructed by the Board of Directors of The Central Railroad and Banking Company of Georgia to ask this Board to alter the Resolutions adopted October 27, 1882, so that the capital stock of The Western Railroad of Alabama be fixed at $3,000,000 instead of $2,000,000 in order that the stock and bonds of that road shall represent its value and cost.

On motion of Mr. James the following Preamble and Resolutions were adopted:

Whereas the proposition that The Western Railroad of Alabama be capitalized at the sum of $3,000,000 appears to be just and reasonable, and our proposition of the same does not exceed the
53 amount invested therein in various forms by this Company;

Resolved, That this Company hereby consents that said capital stock be fixed at the sum of ($3,000,000) Three million dollars, the same to be issued in paid up certificates accordingly and the proper authority is hereby authorized to carry these resolutions into effect.

The Board then adjourned.

C. C. GOODRICH, *Sec't'y.*

(EXHIBIT "B.")

Statement of Assessments Made by the Comptroller General of Georgia on the 15,000 *Shares of Stock of the Western Railway of Alabama for Taxation, Beginning with the Year* 1883 *to the Year* 1904.

	Value.	Tax Rate.	Tax.
1883.	$1,350,000	2.5 mills	$3,375.00
1884.	1,450,000	3 "	4,350.00
1885.	800,000	3.5 "	2,800.00
1886.	850,000	3.5 "	2,975.00
1887.	850,000	3.77 "	3,204.50
1888.	850,000	3.56 "	3,026.00

1889.	850,000	4.	mills	3,400.00
1890.	1,400,000	3.96	"	5,544.00
1891.	1,300,000	5.08	"	6,604.00
1892.	900,000	4.85	"	4,365.00
1893.	800,000	4.61	"	3,688.00
1894.	850,000	4.37	"	3,714.50
54 1895.	900,000	4.56	mills	$4,104.00
1896.	1,050,000	4.56	"	4,788.00
1897.	1,400,000	5.21	"	7,294.00
1898.	1,100,000	6.21	"	6,831.00
1899.	1,450,000	5.36	"	7,772.00
1900.	1,450,000	5.20	"	7,540.00
1901.	1,600,000	5.44	"	8,704.00
1902.	1,950,000	5.30	"	10,335.00
1903.	2,200,000	5.	"	11,000.00
1904.	2,200,000	4.80	"	10,560.00
				$125,974.00

(EXHIBIT "C.")

GEORGIA, *Fulton County:*

To The Georgia Railroad and Banking Company or Tenant:

Please take notice that I have this day levied a *fi. fa.* issued upon the Comptroller General of the State of Georgia, this County, upon the property described below, and will proceed to advertise and sell the same, as prescribed by law, before the Court House door in the City of Atlanta, on the first Tuesday in April, 1905, within the legal hours of sale. This Feb. 23rd, 1905.

JNO. W. NELMS, *Sheriff.*

STATE OF GEORGIA, *Fulton County:*

I have this day levied the within *fi. fa.* on the following real estate, to-wit:

55 Part of land lot # 77 in the 14th district of Fulton County, Georgia, in Ward 2 of the City of Atlanta, Georgia, commencing on the Northeast corner of Central Avenue (formerly Loyd street) and Waverly Place and running thence in an easterly direction along the North side of Waverly Place and beyond the ending of Waverly Place a sufficient distance to make 544 feet more or less thence Northerly 265 feet more or less thence westerly 544 feet more or less to Central Ave., thence Southerly along the east side of Central Avenue 225 feet more or less to the point of beginning known as the Georgia Railroad and Banking Company's Warehouse, together with the building thereon containing three acres more or less.

Levied on as the property of the Georgia Railroad and Banking Company to satisfy as Tax *fi. fa.* issued by Wm. A. Wright, Comptroller General of the State of Georgia *vs.* said The Georgia Railroad and Banking Company.

This Feb. — 1905.

(Georgia Railroad. Received Feb. 27, 1905. Atlanta. S. E. Magill, Gen. Agt.)

Service of the within petition, process and order is acknowledged, copies and further or other service is waived.

This March 4th, 1905.

JOHN W. NELMS, *Sheriff.*
JNO. C. HART, *Att'y Gen'l,*
Att'y for Def'ts.

56 Filed in office this the 4th day of March, 1905.

T. C. MILLER,
Deputy Clerk.

STATE OF GEORGIA, *County of Fulton:*

THE GEORGIA RAILROAD & BANKING CO.
vs.
WM. A. WRIGHT, Comptroller General, and JOHN W. NELMS, Sheriff.

To the Sheriff or his Deputy, of said County, Greeting:

The Defendants are hereby required, personally or by attorney, to be and appear at the Superior Court, to be held in and for said County on the first Monday in September, 1905, then and there to answer the Plaintiff's Complaint as in default thereof said Court shall proceed as to justice shall appertain.

Witness, The Honorable J. H. Lumpkin, Judge of said Court, this 4th day of March, 1905.

T. C. MILLER,
Deputy Clerk.

Read and considered. Let this petition be filed and let the defendants show cause before me on Saturday, March 18th, 1905, at 9 o'clock A. M., or so soon thereafter as Counsel can be heard, at the Superior Court Room in Atlanta, Ga., why the temporary
57 injunction should not be granted as prayed for.

In the meantime and until the hearing and further order of the Court the defendants are restrained as prayed in said petition.

Let copy of said petition and of this order be served on the defendants. March 4th, 1905.

J. H. LUMPKIN,
Judge S. C. A. C.

(The following order appears written upon the back of the foregoing petition:)

(Order.)

After hearing the evidence and argument of counsel it is ordered that the within application for injunction be denied.

June 14th, 1905.

J. T. PENDLETON,
Judge S. C. A. C.

(*Amended Petition. Filed April 24th,* 1905.)

EORGIA, *Fulton County:*

The petitioner amends its Petition in the foregoing case as fol-
ws:—

(1.) Petitioner avers that to single out The Georgia Railroad
nd Banking Company and to require it to pay back taxes for
enty two years on foreign stock, when for the same twenty two
ars no other citizen in the State of Georgia has been required to
turn or pay taxes on similar stock, would be a denial "of the equal
otection of the laws" guaranteed by the 14th Amendment of the
onstitution of the United States.

(2.) Petitioner shows that from 1883 to 1899 the form of ques-
ons to be answered by tax payers throughout the State did not re-
aire any taxpayer to answer as to the number of shares owned in a
reign corporation; and that by the universally received and ac-
pted practice of taxpayers, and the State, through its taxing officers,
ock in a foreign corporation was not considered to be taxable in
eorgia, and taxpayers were neither required to make return thereof,
or did they, in fact, make such returns, nor, did they pay taxes on
ch foreign stock from 1883 to 1904, nor have they been assessed
ereon.

That during these years Petitioner made returns like all
other taxpayers and was not required to answer how many
shares in a foreign coporation it owned, nor did it return
e same, that its returns were accepted, and that the Comptroller
eneral did not, within the sixty days required by statute, make any
bjection thereto; That during said years, the State itself owned
nd still owns one hundred and eighty eight (188) shares of the
pital stock of Petitioner, and the taxing officers of the State knew
ow and in what way petitioner was the owner of 15,000 shares of
ock of the Western Railway Company of Alabama, and that with
ch knowledge petitioner was not required to return the same for
xation, nor were other persons, firms or corporations, who owned
reign railroad stock or other similar foreign stock required to
ake returns of like stock, nor were they assessed thereon on failure
make returns.

(3.) Your petitioner shows that because it is known to be the
wner as set out in the petition of a large block of such stock, it is
violation of the equal protection of the law to assess it with back
xes thereon, when multitudes of other citizens who own similar
ock have not returned, or been required to return, such stock
uring the period from 1883 to 1904, and are not assessed with back
xes thereon.

There is not, and cannot be, any ascertainment of the number of
ares of such stock held by those now necessarily unknown, dead or
removed from the State, nor can any assessment thereon ever
be made for said years against such unknown, dead or re-
removed owners; that the present attempt to tax petitioner
nposes upon it a burden which was purposely omitted to be imposed

upon all other owners of foreign stock during the years 1883 to 1904, and denies to Petitioner the equal protection of the laws.

Wherefore, Petitioner says that each of said executions is void because issued in violation of section 1 of the 14th Amendment to the Constitution of the United States, which prohibits the denial to any person of the equal protection of the laws, and is also in violation of Article I, Section I, Paragraph 3 of the Constitution of Georgia (civil Code 5699), which provides that protection to person and property shall be impartial and complete, and also is in violation of Article 7, Section 2, Paragraph 1 of the Constitution of Georgia (civil Code # 5883) which provides that all taxation shall be uniform upon the same class of subjects.

(4.) Petitioner shows that from 1883 to the time for making tax returns in 1899, the statutory questions propounded to taxpayers in making their returns for State taxes did not include therein any inquiry as to the number of shares of foreign stock owned by the person making the return, and that during such period no such property was returned for taxation in Georgia, and the State did not require any return as to such foreign stock or assess taxes thereon.

61 That by Act approved December 22, 1898 (Acts 1898, p. 36–30) providing for the levy and collection of a tax for 1899-1900, there was, for the first time, included in the list of questions, an inquiry as to "how many shares of stock did you own on the day fixed for the return of property for taxation issued by corporations located without this State."

Your petitioner avers that said question as to stock in foreign Railroads was universally disregarded and treated as inoperative, both by the tax officers throughout the State, and the taxpayers, because of the fact among others, that the Supreme Court of Georgia, in the case of Wright, Comptroller General *vs.* Southwestrn R. R. Co., 64 Ga. 799, had decided that "stock in railroads without the limits of this State is not taxable here; that stock in a railroad is really so many shares of its property, which property is real estate for the most part, and taxable by the State in which the road is located."

That acting upon such recognized construction of the non taxability of such stock, no return thereof had been required of taxpayers prior to 1898; that said form of question and inquiry as to the number of shares owned by resident taxpayers in non resident corporations was not re-enacted in the Tax Acts of 1901 and 1902, nor in the Tax Acts of 1903 and 1904, and that no such question was answered by taxpayers generally throughout the State for said years.

62 (5.) Petitioner further shows that for the years from 1898 to 1904 as for the years from 1883 to 1898, all taxpayers and the State, through its taxing officers, all alike treated stock in a foreign railroad as not taxable, and even during the years when the statute required such question to be propounded (1899-1900), the said question was not answered by taxpayers, nor did the taxing officers insist upon an answer thereto, nor was any arbitration had or assessment made against taxpayers neglecting, failing and refusing to

answer such question or to make such return. And Petitioner avers that from 1883 to 1904, no taxes on foreign stock have been paid or demanded, and no assessment for such property as omitted property has been made.

(6.) Petitioner further shows that in view of the decision of the Supreme Court of Georgia, and the universal acquiescence therein, and action thereon, by the Comptroller General, all state and county taxing officers, and by all citizens and taxpayers it is a manifest discrimination and an unequal and partial administration of the law, and a violation of Article I, Section 1, Paragraph 2 of the Constitution of Georgia (Civil Code 5699) and also in violation of Art. 7, Sec. 2, Par. 1, of the Constitution of Georgia (Civil Code 5883) which provides for uniformity on the collection of taxes to assess against petitioner taxes upon such property for years and during the period when similar taxes have not been assessed against other taxpayers holding a similar class of property,
63 and your petitioner further avers that, for the same reason, it would be in direct conflict with Section 1 of the 14th Amendment to the Constitution of The United States which provides for the equal protection of the laws.

(7.) Petitioner avers that the said Act of 1898, in so far as it attempts to tax shares of stock issued by corporations located without the State, while not taxing shares of stock issued by corporation-located within the State, or chartered by the State of Georgia, is unconstitutional, null and void, for that, if shares of stock of railroad companies are taxable property as personal property in the hands of the holders thereof, the taxation of such shares when issued by corporations not chartered by the State of Georgia, while shares issued by corporations chartered by said State are not taxed amounts to a classification of property for the purpose of taxation, and taxes one class of shares, while not taxing the other class of shares, and so violates the Constitution of the State of Georgia, which provides that all taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

(8.) Petitioner further says that for the State of Georgia to recognize as it does railroad shares issued by corporations chartered by the State of Georgia as being mere symbols of the property owned by the corporation, and as not being taxable property in the hands
64 of the holders of said shares, if it should attempt by the Act of 1898, or any other Act, to classify railroad shares issued by corporations chartered by States other than the State of Georgia, as personal property in the hands of taxpayers in the State of Georgia, it would be a classification of some railroad shares as property, while recognizing that other railroad shares were not property, and as such would be illegal, null and void, and contrary to the provisions of the Constitution of the State of Georgia, last aforesaid.

(9.) Petitioner further shows that on February 17th, 1905, the Defendant William A. Wright, Comptroller General of the State of Georgia, issued against Petitioner 22 executions for taxes alleged to

be due for the years 1883 to 1904 inclusive, the sums for which said executions issued being set out in Exhibit A to the original Petition. Petitioner attaches hereto a copy of one of said Executions, and avers that all of the others are of like tenor and effect, varying only in the amount for which said executions issued, and the amount itself varying because of the varying rate of taxation for each specific year.

(10.) Petitioner avers that each of said executions is null and void because issued without authority of law.

(11.) Petitioner avers, that for each of the years from 1883 to 1904 it made a return; that said returns were accepted, and that the Comptroller General had no authority to issue any or all of
65 said executions which have been levied upon Petitioner's property.

(12.) Petitioner further shows that where a return has been made and the same is unsatisfactory to the Comptroller General, he may, under the provisions of Section 812 of the Political Code, within sixty days after a return is made, proceed to correct the same and to make assessment for the current year from the best information at his command; that the Comptroller General did not, within the sixty days provided by statute, make any such correction or assessment, nor give Petitioner the twenty days' notice required by such statute, so that any difference between Petitioner and the Comptroller General might have been referred to arbitration.

Wherefore petitioner says that each of said executions issued without warrant of law, and contrary to law, and should be cancelled and set aside as a cloud on Petitioner's title.

(13.) Petitioner further shows that each of said executions issued without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, for that the laws of Georgia do not provide for the Comptroller General to issue executions for back taxes on omitted property. The law fixes no time or place for the hearing of any question as to the liability of the owner to pay back taxes, nor for the determination of the question as to whether the property alleged to have been omitted is subject to taxation, nor whether it was properly omitted, nor for the
66 hearing of evidence as to the value of said property. Petitioner avers that the law provides for no pleadings, summons, process, service, or notice of the time or place of such hearing, and affords no right or opportunity to the taxpayer to be heard, as to the assessment for such back taxes.

(14.) Petitioner further shows that as a fact no proceeding was ever instituted by or before the Comptroller General for assessing taxes for the years 1883 to 1904, on the 15,000 shares of the capital stock of the Western Railway of Alabama Company; and no process or notice was ever served upon Petitioner, and the law provides no right or method of hearing before said executions issued; no hearing was in fact had, and no evidence taken, and said executions issued without due process of law by the Comptroller General acting *coram non judice.*

(15.) Petitioner therefore says that said executions and each of them are null and void as having issued without due process of law and in violation of Section I of the 14th Amendment to the Consti-

tution of the United States, and also issued without the due process of law guaranteed by Article I, Section I, Paragraph 3 of the Constitution of Georgia (Civil Code 5700).

(16.) Petitioner further shows that all right to collect taxes for the years 1883 to 1901 are stale demands and should be decreed to be barred as such under the provisions of Civil Code Section
67 3775, and that further all right to collect taxes for the years 1883-1898 are barred by the provisions of Political Code Sections 890 and 891, and that all right to taxes for the years prior to 1900 are barred under the provisions of Civil Code Section 3768.

(17.) Petitioner shows that the face of the executions issued by the Comptroller General against it for property alleged to have been omitted for the years 1883-1904 aggregate $——; that each of said executions have been levied on real estate belonging to petitioner, and that such land is of the value of $——, and by reason of the fact that Petitioner's switching yard and terminals are located thereon, the same is absolutely essential for the discharge by petitioner of its duty as a public carrier, and that by reason of the vast sums so levied, Petitioner is remediless at Common law, or by suit for damages, or other form of action.

Wherefore, and to prevent a multiplicity of suits and to avoid filing separate defenses to each of said *Fi. Fas*, and to remove the said executions as clouds upon its title Petitioner prays:

(1.) That all of said executions for back taxes for the years prior to 1900 be adjudged to be barred by the statute of limitations.

(2.) That each and all of said executions be declared to be void because issued in violation of section I of the 14th Amendment of the Constitution of the United States, as denying to Petitioner the equal protection of the laws.
68 (3.) That each and all of said executions be declared void, because issued without due process of law in violation of Section I of the 14th Amendment to the Constitution of the United States.

(4.) That each and all of said executions be declared to be void because issued without due process of law and in violation of Article I, Section I, Paragraph 3, of the Constitution of Georgia (civil Code 5700).

(5.) That each and all of said executions be declared null and void because issued in violation of Article 7, Section 2, Paragraph I of the Constitution of Georgia, which provides for uniformity of taxation, and in further violation of Article I, Section I, Paragraph 2 of the Constitution of Georgia.

JOS. B. & BRYAN CUMMING,
KING, SPALDING & LITTLE,
JOS. R. LAMAR,
Solicitors for Petitioner.

Fi. Fa. For States Taxes. 6530.

Comptroller General's Office.

STATE OF GEORGIA, *Fulton County:*

To all and singular The Sheriffs and other Lawful Officers of this State:

69 You are hereby commanded, that of all goods and chattels, lands, tenements and franchises of The Georgia Railroad and Banking Company a corporation doing business in this State and chartered under the laws of this State and lying wholly within this State, you cause to be made the sum of Seven thousand five hundred and forty and 00/100 ($7540.00) dollars as its tax for the year 1900, due the State of Georgia, and interest at seven per cent. per annum from December 20th, 1900, under and by virtue of the laws of the State of Georgia, providing for the taxation of railroads in this State, for State purposes in pursuance of an assessment on file in this office as follows:—

Whereas, The Georgia Railroad and Banking Company, a corporation chartered under the laws of Georgia and doing business in this State, having failed and refused to return for taxation for the year 1900 15,000 shares of stock of the Western Railway of Alabama corporation said stock being then held and owned by said The Georgia Railroad and Banking Company in this State; and having failed and refused to pay the taxes then due the State thereon for the year 1900, as required by law, I hereby assess the said 15,000 shares of Stock of The Western Railway of Alabama for said year as being then of the value of $1,350,000. Said assessment being made by virtue of authority vested in me as Comptroller General from the "best information I can procure," and all lawful costs and that you pay over said sum of money to the

70 Comptroller General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State under his official hand and the seal of said office.

Issued this, the 17th day of February, 1905.

WILLIAM A. WRIGHT,
Comptroller General of Georgia.

Service of the foregoing amendment acknowledged, This 20th day of April, 1905.

JOHN C. HART,
BOYKIN WRIGHT,
Att'ys for Def'ts.

Amendment allowed. April 24th, 1905.

J. T. PENDLETON, *Judge.*

Filed in office this the 24th day of April 1905.

W. H. ABBOTT,
Deputy Clerk.

(Answer. Filed 24th Day of April, 1905.)

GEORGIA, *Fulton County:*

To the Superior Court of Fulton County:—

And now comes William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, Sheriff of Fulton County, defendants in the above stated case, and in response to the
71 rule therein to show cause why the injunction prayed for in the petition should not be granted, say:

That the injunction should be refused for the reasons set forth in the Demurrer, sworn Plea and sworn Answer of defendants, marked Exhibits "A," "B," and "C" respectively and hereby made a part of this response as though incorporated in the body thereof.

For further cause these defendants present the affidavits of William A. Wright and Joseph M. Terrell of file in said cause.

WM. A. WRIGHT,
Comptroller, &c.
JOHN W. NELMS, *Sheriff, &c.*
By Their Att'ys at Law, JOHN C. HART,
BOYKIN WRIGHT.

(EXHIBIT "A.")

#12418.

Fulton Superior Court, Sept. Term, 1905.

THE GEORGIA RAILROAD & BANKING CO.
vs.
WILLIAM A. WRIGHT, Comptroller Gen'l, ET AL.

To the Superior Court of Fulton County:

Now comes the defendants by their attorneys at law and jointly and severally demur generally and specially to the plaintiff's petition and for grounds of demurrer allege:—

(1.) That plaintiff has not by its said bill made such a case as entitles it in a court of equity to any relief from or against
72 these defendants or either of them touching the matters contained in said bill of any of such matters.

(2.) It appears from Plaintiff's own showing in said petition that it is not entitled to the relief prayed by the bill against these defendants.

(3.) The petition is without equity. The complainants have full, adequate and complete remedy at common law.

(4.) The petition does not set forth any cause of action against these defendants.

(5.) Defendants jointly and severally demur to paragraph five of the petition upon the ground that the matters therein set out

are irrelevant, immaterial and not germane to the issues raised by said petition.

(6.) Specially demurring to paragraph Six of said petition defendants jointly and severally say that the same alleges the mere conclusions of the pleader, no fact being alleged upon which to base said conclusions. And defendants say that the lease therein referred to should be attached as an exhibit and made a part of the petition.

(7.) Defendants jointly and severally demur to paragraph 8 of said petition upon the following grounds:

(*a.*) Because the allegations therein set forth mere conclusions of the pleader, no facts being alleged upon which to base said conclusions.

73 (*b.*) The same is argumentative.

(8.) Defendants jointly and severally demur to paragraph 9 of the petition upon the following grounds:

(*a.*) The same is irrelevant, immaterial and not germane to the issues raised by the petition.

(*b.*) For the further reason that the deed therein referred to is not attached and made a part of the petition.

(9.) Defendants jointly and severally specially demur to paragraph 11 of the petition upon the following grounds:

(*a.*) It sets forth the mere conclusions of the pleader no facts being alleged upon which to base said conclusion.

(*b.*) For the further reason that it is argumentative.

(*c.*) Because the assignment from petitioner to the corporation is alleged to have been in writing and the same should be attached as an exhibit and made a part of the petition.

(10.) Defendants jointly and severally demur specially to paragraph 12 of the petition upon the following grounds:

(*a.*) It is the mere conclusion of the pleader without stating the facts, that the fifteen thousand shares of stock has nothing of any present value, or that the stock has only a reversionary value;

(*b.*) It is not within the scope of individuals to contract so as to render by private contract a thing valueless which is declared by law to be of value, so as to relieve it of taxation.

74 (*c.*) The State for purposes of taxation is not concerned with the equities existing between parties as beneficially interested in property. Shares of stock are property in Georgia and under its laws and Constitution subject to taxation.

(11.) Defendants jointly and severally demur specially to paragraph (14) of the petition upon the following grounds:

(*a.*) It is the mere conclusion of the pleader that William A. Wright in issuing said executions in acting without warrant of law and against law, no sufficient reason being alleged as the basis for such conclusion:

(*b.*) As to sub-section A thereunder, defendants specially demur, and for cause of demurrer say that said shares of stock are property subject to taxation under the laws of Georgia.

(*c.*) And specially demur to sub-section B, and for cause of de-

murrer say that the said shares of stock are under the laws of Georgia property within said States and subject to be taxed;

(*d.*) And specially demur to sub-section C, and for cause of demurrer say it is competent under the Constitution and laws of this State to levy and collect taxes on shares of stock in Georgia by levying the tax on the shares of a foreign corporation and by levying the tax on the property of the domestic corporation, so that both the foreign and domestic shares pay alike their taxes;

(*e.*) And specially demur to sub-section D, and for cause of demurrer say, petitioner's duty was to return the property in
75 controversy to the Comptroller General as provided by the laws of this State and the fact that petitioner made annual reports, which it printed and published to its stockholders in all part- of Georgia, could not avail it as a return of its property for taxation as was its duty to the Comptroller General, nor does the petition allege that the Comptroller General ever had any notice of the ownership of this stock until a demand was made thereon by him on the — day of ——, 1901. Nor can complainant justify its failure to return its property for taxation, as was its duty under the law, by urging as a reason "that the general understanding of all the people of the State was that the same were not subject to taxation." It is not alleged that Comptroller General knew that complainant was the owner of this stock and complainant cannot claim an advantage by reason of the failure of the Comptroller General to demand of it taxes on this stock when it had omitted to return the same for taxation.

(*f.*) And specially demur to sub-section E and for cause of demurrer say, petitioner cannot complain that its property is being taken without due process of law when it failed in each year and now fails, neglects and refuses to return its said property for taxation;

(*g.*) And specially demurs to sub-section F and for cause of demurrer say, it is argumentative, involving mere conclusions of law without giving the reasons therefor; and because petitioner admits that the shares of stock are of some value and fails to tender any tax due thereon; nor can it be urged as a reason in law to
76 excuse petitioner from paying taxes upon its property that other property in Georgia is returned at sixty-five per cent. of its fair value;

(*h.*) And specially demur to sub-section G and for cause of demurrer say, the same is vague and indefinite and does not particularly specify the particular part of the Constitution of the United States that is violated by the Tax Act mentioned; nor specify in what particular petitioner is denied the equal protection of the law;

(*i.*) And specially demur to sub-section H and for cause of demurrer say, that interest on taxes by a delinquent taxpayer begins to run from the time that the taxes are due, and while interest is not collectible unless an execution issues therefor, when such execution does issue, it should bear interest from the date the taxes were due;

(*j.*) And specially demur to sub-section I and for cause of demur-

rer say, that is no statute of limitation applied to the State in the collection of taxes from a delinquent taxpayer.

JOHN C. HART,
BOYKIN WRIGHT,
Att'ys for Def'ts.

(EXHIBIT "B.")

Fulton Superior Court, September Term, 1905.

THE GEORGIA RAILROAD & BANKING CO.
vs.
WM. A. WRIGHT, Comptroller Gen'l, ET AL.

Petition for Injunction.

77 To the Superior Court of Fulton County:

And now comes Wm. A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, Sheriff of the County of Fulton, the defendants in the above stated case, at the first term of the court and subject to their demurrer already of file make plea and say.

(1.) The petitioner should not have and maintain said cause of action because there has been an adjudication of the same subject matter put in issue in said petition, in a former suit between the same parties by a court of competent jurisdiction, wherein the merits in said cause were put in issue, heard considered and finally passed upon, to-wit: in the suit of The Louisville & Nashville Railroad Co., and The Atlantic Coast Line Railroad Co. *vs.* Wm. A. Wright, Comptroller General, and The Georgia Railroad and Banking Co., filed in the Circuit Court of the United States for the Northern District of Georgia, August 22nd, 1901, wherein a final decree in said Circuit Court of the United States for the Northern District of Georgia, was entered in behalf of the complainants in said suit April 7, 1902, which decree was appealed by the said Wm. A. Wright, Comptroller General, to the Circiut Court of Appeals after written request by the said Wm. A. Wright Comptroller General, to his co-defendant, The Georgia Railroad and Banking Company to join in said appeal, and after its said co-defendant refused to join in said appeal, declaring itself to be content with the decree rendered in said cause. The

78 said Circuit Court of Appeals having affirmed the decision of the Circuit Court the cause was taken by certiorari at the instance of said Wm. A. Wright, Comptroller General, to the Supreme Court of the United States, where the petition of certiorari was granted and the record ordered sent up for review by that Court, which court reversed the decision of the courts below and set aside the decree enjoining the said Georgia Railroad and Banking Company from paying and the said William A. Wright from collection the tax claimed by the said Comptroller General, and which was the object of said suit to enjoin. The real controversy in the said litigation was the taxability of the fifteen thousand shares of stock held and owned by the Georgia Railroad and Banking Company in the

Western Railway of Alabama, the same being the subject matter of this controversy. A copy of the record of said cause, including the final judgment and decree therein, is hereto attached marked exhibit A, and made a part of this plea.

WM. A. WRIGHT,
Comptroller General of Ga.

(Verify.)

STATE OF GEORGIA, *Fulton County:*

Personally appeared Wm. A. Wright, who being duly sworn deposes and says that he is the Comptroller General of the State of Georgia, and has been since the year 1899 and swears that the contents of the plea of *Res adjudicata* on opposite page hereof are
79 true so far as the matters and things stated therein come within his own knowledge and so far as the matters and things stated therein on inforamtion derived from others he believes them to be true.

WM. A. WRIGHT.

Sworn to, and subscribed before me, this the 26th May 1905.
W. H. ABBOTT,
N. P., Fulton Co., Ga.

(EXHIBIT "C.")

Fulton Superior Court, Sept. Term, 1905.

THE GEORGIA AND BANKING CO.
vs.
WILLIAM A. WRIGHT, Comptroller Gen'l, ET AL.

Petition for Injunction.

And now come William A. Wright, Comptroller General of the State of Georgia and John W. Nelms, Sheriff of Fulton Counrt in said State, the defendants in the above stated cause, at the first term of the Court, and subject to the demurrer and pleas already of file in said cause, make answer as follows:—

(1.) Defendants admit the allegations contained in paragraphs 1, 2, 4, 5, 9, 10 (except as to the exhibit mentioned in paragraph 10) and 13, of the petition, and deny the allegations contained in paragraphs 3, 6, 7, 8, 11, 12, and 14 of the petition, including all the sub-divisions of paragraph 14, lettered A, B, C, D, E, F, G, H,
80 and I, except as hereinafter specifically admitted.

(2.) As to paragraph 3 of the petition, defendants admit that Petitioner (The Georgia Railroad and Banking Company) was at the time of the Lease of its property to William M. Wadley and his assigns on May 7th, 1881, the owner of a one-half undivided interest in the Western Railroad of Alabama, which Railway is situated in the State of Alabama, extending from the Town of West Point in the County of Troup in the State of Georgia to Selma in

the State of Alabama, but deny that Petitioner continued to bear the same relation to the property of the Western Railway of Alabama after the incorporation of said railroad and issuance of stock therein to Petitioner and to the Central Railroad and Banking Company of Georgia, with the consent of the Lessor and Lessee of the Georgia Railroad and Banking Company, and the conveyance by deed of said property to the Western Railway of Alabama, which then became the owner in fee of said property, the The Georgia Railroad and Banking Company became the owner of 15,000 shares of the stock, and the Central Railroad & Banking Company of Georgia became the owner of the remaining 15,000 shares of stock in said Company.

(3.) As to paragraph 6 of the petition defendants, admit that while said Western Railroad of Alabama and its franchises were held by the Central Railroad & Banking Company of Georgia and
81 The Georgia Railroad and Banking Company as co-tenants in common Petitioner made a Lease, to-wit, on May 7th, 1881, to William M. Wadley and his assigns of all its railroad properties of every description for a term of 99 years from April 1st, 1881, as set forth in the instrument of Lease and admits the correctness of the clause quoted from said Lease in paragraph six of the petition but deny that said clause contains all that is necessary to show the terms and conditions of said interest which was conveyed by Petitioner to said Lessee and assigns.

Defendants aver that it was specifically provided in said Lease that if certain portions of said Western Railway of Alabama should be sold one half of the proceeds of the sale should be received by The Georgia Railroad & Banking Company, but in consideration that the Lessee and his assigns would thereby lose the free use of the railroads thus sold, it was stipulated that The Georgia Railroad and Banking Company would in that event pay to the Lessee and his assigns interest on said half of the proceeds, at the same rate that the bonds of the Western Railway of Alabama or its successor might bear at the date of payment of the interest of said bonds. It was further stipulated in said Lease that when desired by the Lessee and his assigns The Georgia Railroad & Banking Company would consent to the organization of the owners (The Central Railroad and Banking Company of Georgia and The Georgia Railroad and Banking
82 Company) of the Western Railroad of Alabama into a corporation, and to the issue by said corporation of bonds to renew bonds maturing from time to time, for which the said Railroad of Alabama is liable, which said bonds the Lessor agree- to endorse or guarantee to the same extent that it was then bound for the bonds of the Western Railroad of Alabama; provided, that said incorporation should not impair the beneficial ownership of said Railroad by the Lessor, and provided further that the aggregated amount or bonded indebtedness of said Railroad and the rate of interest thereon should not be increased to an amount and rate exceeding the then amount of bonds and the then rate of interest.

Defendants aver that by the above terms it was expressly provided in the Lease that where any portion of the Western Railroad of Alabama was sold for cash the legal title and possession of the cash was to remain with The Georgia Railroad and Banking Company,

and such portion of said Western Railroad of Alabama as should become incorporated and the property thereof conveyed to the corporation in consideration of its stock, the legal title and possession of said stock likewise should remain with The Georgia Railroad and Banking Company to the extent of its one-half interest therein; the interest in case of the cash sale, and the dividends in the case of stock, alone, being paid to the Lessee. Defendants aver that this situation resulted not only from the terms of the Lease itself but as to the stock in question from the operation of law by reason of the incorporation of said railroad and the conveyance of its property to the
83 corporation and the issuance of stock to the owners. By this deed of conveyance to the corporation which was executed by the owners and joined in by the Lessee, who requested said incorporation, The Georgia Railroad and Banking Company divested itself absolutely of all title to the said railroad property, receiving therefor and in its stead stock in said corporation. Thereafter The Georgia Railroad and Banking Company no longer held any title, absolute or qualified, as tenant in common, or otherwise, in the said Railroad of Alabama; its only interest being that of an ordinary shareholder in a corporation, with the right to such dividends as might thereafter be declared by the corporation, or, in case of liquidation and sale, to its pro rata portion of the proceeds thereof after the payment of the debts of the corporation. The legal title, ownership and possession of such shares remain, both by the terms of the Lease, and by operation of law, with The Georgia Railroad and Banking Company and have been so held and possessed from the date of the issuance of said stock.

(4.) As to paragraph 7 of the petition, Defendants admit that said William M. Wadley immediately after said Lease, in connection with his co-tenant, the Central Railroad & Banking Company of Georgia, entered into possession of said leased interest, and he, or his assigns remained in joint possession of this property with his said co-tenant until the — day of ——, 1882, when the said property was
84 conveyed and the stock issued to the owners as aforesaid; and said incorporation, conveyance and issuance of stock to the owners, being joined in by The Georgia Railroad and Banking Company and the Central Railroad and Banking Company of Georgia with the consent and at the request of the said Lessee. These defendants deny, as alleged in said paragraph 7 of the petition, that the said Wadley and his assigns have remained in possession of said Railroad as tenants in common or that Lessor's and Lessee's interest and relation to the property in question has not changed. After the incorporation, with the consent of all parties at interest, the Lessor became merely a stockholder in said Railroad, with just such rights, and only such rights as the law of corporations confers upon an ordinary stockholder in a corporation.

It may be true that under the spirit, and perhaps the letter of its private contract with the Lessee all dividends on these shares paid by the corporation to The Georgia Railroad and Banking Company, would, in equity, as between themselves belong to the Lessee, but this fact would not alter the relation which the shareholder bears

to the corporation or to the law, nor make the stock thus held in the name of The Georgia Railroad and Banking Company any the less the property of The Georgia Railroad and Banking Company and subject to be taxed against The Georgia Railroad and Banking Company as the legal owner and holder of said property in said State.

85 When shares of stock subject to be taxed by the Constitution and laws of Georgia are found issued in the name of and in the possession of a resident holder and owner thereof, it is no concern of the taxing officer to inquire who may, under some private contract, be entitled to the dividends which the holder and owner received. These private equities between parties are no concern of the State or its taxing officers.

The entire value of the share or shares is taxable, as a single entity, at the domicile of the legal owner in whose name and possession said shares are found, and is not taxable in parts to various persons who may be entitled to receive or share in, the dividends, arising therefrom. As to the distribution of the dividends between the parties beneficially entitled thereto, this is a matter of private agreement; and, as matter of fact, it was provided for in the case at bar by the terms of the Lease, whereby the dividends were to go to the Lessee, and these very taxes to be paid by the lessee, thereby making it impossible for the Petitioner in this case to suffer any hardship if these taxes are collected.

Defendants submit these facts and reflections, with respect to the Lease, merely in reply to the allegations of the petition, but protest that neither the Lease nor the terms thereof, nor the private agreements or equities, growing out of the same, between the parties thereto, have ought to do with the taxability of these shares of stock, found in the possession and ownership of The Georgia Railroad and Banking Company; nor is it pertinent to inquire how The

86 Georgia Railroad and Banking Company came into possession of said shares, nor to whom the dividends, after they have been received by The Georgia Railroad and Banking Company, are to be distributed. They are shares of stock, the legal title to which vests in The Georgia Railroad and Banking Company. They stand on the books of the Company in the name of The Georgia Railroad and Banking Company. The dividends are declared in the name of The Georgia Railroad and Banking Company and paid over to that Company. They are personal property held in this State by The Georgia Railroad and Banking Company, which property, under the Constitution and laws of the State, is subject to be taxed ad valorem. This is all that the State or its taxing officers need concern themselves about. Hence defendants insist that all allegations of the petition, setting forth the fact that Petitioner was at once time the owner as tenant in common of said Railroad when its interest in the same could not be taxed in Georgia, and all the allegations concerning the Lease of said property, with a view of claiming that these shares are likewise non-taxable, and by reason of said Lease, belong in a class different from the shares of an ordinary resident stockholder in a foreign corporation, are irrelevant and impertinent, and constitute no reason, in law, why said personal prop-

erty should not be taxed as other personal property held and owned in this State is taxed.

87 (5.) Further answering the allegations contained in paragraph 8 of the petition, viz., "At the time of said conveyance to Wadley and his assigns and at all times before, Petitioner had no property or interest in said Western Railroad of Alabama which could be taxed under any law of the State of Georgia then existing or by any such law as now exists; and Petitioner has not acquired any new right or interest in said property since that time, and under its aforesaid conveyance to Wadley and his assigns could not. Petitioner has had in said property since said conveyance nothing except a reversionary right—the right to have it returned to Petitioner's possession April 1st, 1980. Immediately, and for some time, after the said Lease, the evidence of his right existed only in the terms of the Lease itself. Subsequently the evidence of this right has also existed in the form of a certificate of stock," defendants say:

In the two preceding paragraphs of this Answer defendants have already sought to show wherein and how petitioner's interest in the Western Railroad of Alabama was entirely changed by putting it into a corporation and receiving stock therefor, with the full knowledge and consent of the lessee or tenant for years. This change-condition of title and ownership followed inevitably from the act of incorporation. The tenants in common who owned the fee in the Railroad property and the lessee who joined in the entire

88 scheme of incorporation were fully aware that immediately upon the incorporation of the legal title to all the property, hitherto held by the tenants in common, would pass to the Western Railway of Alabama, and the title to the shares issued, and their possession would pass to the owners, the Central Railroad and Banking Company of Georgia and The Georgia Railroad and Banking Company. Presumably all these parties at interest had good and sufficient reasons for desiring to become incorporated, and, therefore, were willing to incur the obligations and burdens attached to the changed condition, in order to enjoy the increased privileges incident to incorporation. There are many privileges attaching to corporations, such as perpetual succession, right of eminent domain, transfer of shares, non liability of shareholders for the debts of the corporation, and others unnecessary to mention.

Replying to Petitioner's allegation that it has acquired no new right or interest in said property, defendants say that whereas before the incorporation it was a part owner in realty located in Alabama, which was non taxable in Georgia, after the incorporation, it ceased to be an owner of realty in Alabama, and in lieu thereof became the owner of personal property located in the State of Georgia and as such taxable in this State. While no new wealth was created the entire investment theretofore existing in real estate located in Alabama, as well as the estate for years as the reversionary estate had been,

by the voluntary and united act of all the owners of every in-

89 terest, converted from real estate in Alabama into corporate shares of stock—personal securities, issued and delivered to the possession of the Georgia Railroad and Banking Company, the

former owner in fee of the realty which corporation has ever since held the same as the legal owner of said shares, giving to the lessee the dividends as received and a proxy to vote said stock during the term of the Lease, as a satisfactory means to the lessee of enjoying their rights under the lease.

(6.) As to the allegations contained in paragraph 11 of the petition which has been generally denied, defendants submit the following by way of further answer thereto: Defendants specifically deny that the incorporation of its property "did not change Petitioner's substantial relation to the property," for the reasons contained in the foregoing paragraph of this Answer.

It is inaccurate, both as to the fact and as to the legal effect, to say, as stated in paragraph 11 of the Petition, that the deed conveying the property of the Western Railroad of Alabama to the corporation did not convey to that corporation anything but "Petitioner's reversionary interest." The defendants say that the conveyance, which was joined in and confirmed by the Lessee, conveyed the entire estate of said Railroad Property in fee simple to the corporation, as well the interest of the Lessee as of the Lessor, the Lessee being content, in lieu of his previous interest as a tenant for years of
90 the realty, to receive from the lessor an agreement whereby the Lessee should enjoy the dividends declared upon the stock held by Lessor, and to hold proxies from the Lessor to vote the stock, during the Lease.

It may well be admitted that it was no part of the scheme of incorporation nor of the deed conveying the property to the corporation, to interfere with the Lessee's right to control and manage said railroad property, and this interest was accordingly protected to the full satisfaction of Lessee by the provisions agreed upon between the Lessee and the Lessor, in giving to the Lessee the proxy to vote said stock and an agreement to turn over to Lessee all dividends upon the stock during the term of the Lease. The shares of stock issued to Petitioner represented an undivided one-half interest in the entire property and not simply a reversionary interest therein; otherwise what right had the corporation to issue stock for the full value, to one who conveyed only a moiety of the estate in the property? What stock (and to whom) did the corporation issue for the other moiety, viz., the estate for years? Defendants insist that by the joint act of both Lessor and Lessee the whole estate, both the one for years and the reversionary, were conveyed to the corporation, and the stock issued to The Georgia Railroad and Banking Company was stock representing the full value of the entire estate.

Defendants further submits that the giving of a Power of
91 Attorney to vote stock does not change the title thereto nor relieve the owner of the duty to pay taxes.

(7.) As to the allegations contained in paragraph 12 of the petitioner, viz., "So that in said 15,000 shares of stock your Petitioner had nothing of any present value. They yielded Petitioner no income and gave Petitioner no voice in the control of the railroad. Nor can Petitioner sell or pledge the same and thus derive some ad-

vantage from its so-called ownership," Defendants say: If petitioner is the legal owner and holder of shares of stock, here in Georgia, which yield an income in the shape of dividends declared thereon, it cannot affect the taxability of that stock whether the dividends are kept and enjoyed by the shareholder or distributed under some private contract or equities, to other parties. The value of the property—the one thing the State is interested in—is the same, no matter who receives the income or dividends. That Petitioner may not be in a position to "sell or pledge" its said stock, if such disability exists, grows out of its own private contract. An owner of stock may, under some private contract, for valuable consideration, so tie up his stock as not to be able to sell or pledge it, but that does not affect its taxability or its taxable value. The value of the stock, in so far as the income thereon fixes the same, is determined by the amount of dividends it draws, and not by the particular person or persons to whom the dividends are paid.

92 Defendants submit therefore that none of the facts set up by Petitioner in paragraphs 6, 7, 8, 11 and 12 of the petition, constitute in law any reason why the said 15,000 shares of stock, held and owned by The Georgia Railroad and Banking Company in the County of Richmond and State of Georgia, should not be taxed as any other shares of stock in a foreign corporation held and owned by a resident owner here in this State is taxed. Nor does the petitioner in said allegations set forth any reason why a Court of Equity should relieve it of its duty under the law to pay taxes on these shares of stock. Petitioner bases its equity for such relief upon substantially the following statement of facts, viz., that while, Petitioner partly owned the railroad in fee it leased the same for 99 years, to Wadley and assigns with the right reserved in said lease for the incorporation of said railroad when desired by its co-owner, Lessor and Lessee; that said incorporation took place in 1883, with the co-operation of all concerned, and was completed by the conveyance to the corporation of all the railroad property and the issuance to The Georgia Railroad and Banking Company of stock for the full value of its one-half interest therein; that The Georgia Railroad and Banking Company gave to the Lessee an irrevocable proxy to vote said stock and an obligation to pay Lessee the dividends declared on said stock, during the term of the Lease, as a means to the Lessee of enjoying the control and management of the road guaranteed in the Lease.

93 Petitioner says, in effect, that the Court ought to consider the entire incorporation proceedings, if not a nullity, at least a sort of fiction, in so far as taxation is concerned, but in all other respects to treat the same as fully effective and as creating a corporation, possessing all the rights, privileges, immunities and advantages given by the law to corporations in general. It would retain, for instance, its right of non-liability for the debts of the Western Railway of Alabama, and if sued, would insist promptly and properly upon the right to plead that it was no longer the owner of said railroad but a mere stockholder therein, and in no wise liable for the debts of the corporation. But, for the purpose of relieving itself of taxes on these shares, it asks the Court to deal with the subject, in so far as taxation

is concerned, as though no stock was held by or had been issued to The George Railroad and Banking Company and as though its only holding was a reversionary fee in realty in Alabama. It asks the Court to ignore the law which declares that shares of stock are personal property, separate and distinct from the property of the corporation, and vest in the shareholder and is taxable according to its value at the domicile of the owner; it asks the Court to treat these shares as mere symbols or representatives of property, and not as substantial property; it asks that this property be made an exception to the law taxing shares of stock in foreign corporations, because of the peculiar circumstan-es alleged, under which the stock was issued, inasmuch as it would be inequitable to require The Georgia
94 Railroad and Banking Company to pay taxes on stock, the income and proxies of which are enjoyed and controlled by another for 99 years from April 1st, 1881. Defendants submit that the Constitution and laws of Georgia control in such matters and that equity must follow the law. Defendants further submit there can be no equity in the contention that Petitioner should be permitted to enjoy all the benefits of incorporation and yet be relieved of the usual obligations and burdens incident thereto, and which are imposed by law.

Defendants submit further that Petitioner has no equity growing out of any hardship to it having to pay a tax on property, the income and control of which are to be enjoyed for many years by the Lessee, since the Lessee is bound, under the terms of the Lease, to pay the said taxes, or, if paid by the Lessor, to reimburse Lessor for said payment. But one tax is exacted of said shares and the real party beneficially interested in said shares, viz., the Lessee during the term of the Lease and the Georgia Railroad & Banking Company after that time, will bear the burden of said tax.

(8.) As to paragraph 13 of the petition, the allegations of which have been generally hereinbefore admitted, defendants further say that it is true that William A. Wright, claiming to have authority for such action by virtue of being Comptroller General of the State of Georgia, has recently demanded from petitioner taxes on said 15,000 shares of stock for each of the years 1883 to 1904 inclusive, with interest on the alleged tax of each year respectively from
95 December 20th, of the year, at the rate of 7% per annum, and that the aggregate of the principal of said taxes is $125,-974.00. Defendants further admit that Petitioner refused to pay said taxes or any portion thereof after due notice and demand. Defendants aver that Petitioner having failed and refused in the first instance for each of the years 1883 to 1904 inclusive although required to do so by the Constitution and laws of this State thereby became a tax defaulter for each and every of said years, and it became the duty of the Comptroller General as soon as he discovered the fact that Petitioner was such defaulter and there was no return by which to assess the tax for him to assess the same, in his discretion from the best information he could procure, and on Petitioner's failure to pay the same to issue execution against it for the amount of taxes due according to law, together with the costs and interest.

(9.) As to the allegations contained in paragraph 14 of the petition which defendants have already generally denied, defendants deny specifically that William A. Wright, in issuing said executions and each of them, has acted without warrant of law and against law, and that said executions are wholly illegal and invalid for the reasons as alleged by Petitioner in said paragraph, or for any other reasons.

(10.) Further answering these defendants aver that there has been an adjudication of each and every subject matter put in
96 issue in said petition, in a former suit between the same parties by a Court of competent jur*sidci*tion wherein the issues in said cause and in the cause at bar now were identical, to-wit, in the suit of the Louisville and Nashville Railroad Company and the Atlantic Coast Line Railway Company *vs.* William A. Wright, Comptroller General and The Georgia Railroad and Banking Company, filed in the Circuit Court of the United States for the Northern District of Georgia, August 22nd, 1901, wherein a final decree in said Circuit Court of the United States for the Northern District of Georgia was entered in behalf of the complainants in said suit April 17th, 1902, which decree was appealed by the said William A. Wright, Comptroller General, to the Circuit Court of Appeals after written request by the said William A. Wright, Comptroller General, to his co-defendant, The Georgia Railroad and Banking Company, to join in said appeal, and after his said co-defendant refused to join in said appeal, declaring itself to be content with the decree rendered in said cause. The said Circuit Court of Appeals having affirmed the decision of the Circuit Court the cause was taken by certiorari, at the instance of said William A. Wright, Comptroller General, to the Supreme Court of the United States, where the petition of certiorari and the record ordered sent up for review by that Court, which last named Court reversed the decision of the Courts below and set aside the decree enjoining the said The Georgia Railroad and Banking Company from paying, and the said William A.
97 Wright from collecting the tax claimed by the said Comptroller General, and which it was the object of said suit to enjoin. The real controversy in said litigation was the taxability of the 15,000 shares of stock held and owned by The Georgia Railroad and Banking Company in the Western Railway of Alabama, the same being the subject matter of this controversy. A copy of the record of said cause, including the final judgment and decree therein, is already of file in this suit being attached as exhibit "A" to the defendants, plea in this cause, to which reference is hereby prayed.

Defendants aver that each and every matter now raised by Petitioner in its said petition have been finally adjudicated as aforesaid, particularly the matters and issues contained in the sub clauses of paragraph 14 of the petition lettered A to I inclusive, except as to the 1st. The years in which the taxes thereon are due and collectible, and 2nd, the interest.

(11.) Further answering defendants say that while Petitioner claims that the valuation of said shares by the Comptroller General is grossly excessive so much so as to deprive Petitioner of the equal protection of the laws and to be contrary to equity and good con-

science, it does not allege what is or was a true valuation of said shares, and does not offer to pay any tax on any values whatsoever for any of the years for which taxes are demanded; but on the contrary refuses to pay any tax whatsoever, and denies that any taxes whatsoever are due. This has been Petitioner's persistent at-
98 titude with reference to these taxes as shown by the litigation aforesaid and the case at bar. For these reasons and because Petitioner refuses to do equity by offering to pay tax upon a reasonable valuation it is not entitled to the relief prayed for and is bound by the assessments made by the Comptroller General in accordance with law.

(12.) Defendants deny that Petitioner has been deprived of the due process of law in that no provision was made in the law by which the tax payer could be heard and the assessment reviewed. On the contrary, defendants aver that if Petitioner when it made its returns for each of said years, had included therein these shares for taxation as required by the Constitution and laws of the State it would have had the same opportunity for a hearing and a review of the assessment by the Comptroller General or a Board of Arbitration which it enjoyed with respect to the items of property which it did actually return to the Comptroller General. Having withheld and omitted these shares of stock from its return it became a delinquent taxpayer as to these shares for each and every year in which they were omitted from its return, and it thereby waived or lost its right to any further notice or hearing before the Comptroller General or a Board of Arbitration. It then became the duty of the Comptroller General, under the statute in such cases made and provided, as soon as he discovered the default, to assess the same from the best information he could procure. Besides defendants say that Petitioner's denial at all times that said tax or any tax was due, and its refusal to pay any
99 tax whatsoever on said shares for any of the years in question, rendered further notice or hearing of any kind useless. The Courts alone could furnish Petitioner the relief it insisted upon. This relief has been sought by Lessor and the matter has been adjudicated in the suit aforesaid, wherein the Court has decreed that taxes on said shares are due by the Petitioner, and that the Comptroller General is bound to collect them.

(13.) These defendants further answering the allegations in *cal*use "H" of paragraph 14 of the petition, deny that the interest on the tax for which the law provides is interest on the executions alone issued for the taxes from the date of the issue thereof, but should bear interest at the rate of 7% per annum from the time fixed by law for issuing the same, and not alone from the time the execution in poi*h*t of fact was issued.

(14.) These defendants specifically deny the allegations in sub clause "I" of paragraph 14 of the petition, to the effect that under the laws of Georgia executions cannot lawfully issue for the collection of taxes alleged to have become due and payable more than seven years before the date at which the executions issue, but insist that where a taxpayer withholds or omits to return certain of his property, which under the laws of the State is taxable he cannot invoke his own wrong as a legal or equitable bar against the collection of said

tax. On the contrary, whenever the taxing officer discovers
100 the default it is his duty to collect the taxes for each and every year in which the default has occurred.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

JOHN C. HART,
BOYKIN WRIGHT,
Attorneys for Defendants.

Fulton Superior Court. Sept. Term 1905.

Petition for Injunction.

THE GEORGIA RAILROAD & BANKING COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General, ET AL.

STATE OF GEORGIA, *Fulton County:*

Personally appeared before the undersigned, William A. Wright who being duly sworn, deposes and says that he is the Comptroller General of the State of Georgia, and has been since the year 18— and that as such Comptroller General he is one of the defendants in the above stated case, and swears that the contents of the foregoing plea and answer are true so far as the matters and things stated
101 therein come within his own knowledge, and so far as they are stated from the knowledge of others, he believes them to be true.

WM. A. WRIGHT.

Sworn to and subscribed before me this 24th day of April, 1905.

T. H. JEFFRIES,
N. P. Fulton Co., Ga.

Due and legal service of a copy of the Answer to show cause why the injunction prayed for in the petition should not be granted in the above stated case, together with the exhibits attached thereto, viz., the Demurrer, Plea and Answer, is hereby acknowledged; also copies of the affidavits of William A. Wright, Comptroller General and J. M. Terrell.

April 18, 1905.

JOS. B. CUMMING,
Plff's Att'y.

Filed in office this the 24th day of April, 1905.

W. H. ABBOTT,
Deputy Clerk.

102 *(Amended Answer. Filed April 26th, 1905.),*

GEORGIA, *Fulton County:*

William A. Wright, Comptroller General, and John W. Nelms, Sheriff of said County of Fulton, leave of the Court being had, amend their answer by adding in paragraph 12 of the answer, specified as Exhibit C, to the rule to show cause after the clause ending with the words "could procure" on page 13th, at the end of line 5 from the top, the following, to-wit: Besides defendants say that petitioner had the right under the law after it was notified of its default and of the fact that the Comptroller General proposed to assess said property for taxation to make a return of the said shares of stock *nunc pro tunc* for each and every one of the preceding years in which it had failed to make a return, whereupon it would have been the duty of the Comptroller General to receive said return, and if they were not satisfactory to him to assess the property in question and to notify the plaintiff as provided for in Section 812 of the Code of 1895, when plaintiff might then have had the valuation submitted to arbitration. In other words, up to the time of the actual assessment by the Comptroller General, the plaintiff might have made his returns for all preceding years *nunc pro tunc* and obtained the right of arbitration as provided in section 812 of the Code.

JOHN C. HART,
BOYKIN WRIGHT,
Def'ts' Att'ys.

103 *(Order.)*

Amendment allowed April 26th, 1905.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this 26th day of April, 1905.

W. H. ABBOTT, *Deputy Clerk.*

(Amended Petition. Filed May 18th, 1905.)

GEORGIA, *Fulton County:*

Now comes the Georgia Railroad and Banking Company and by way of amendment to its Petition, already filed, says:

(1.) That for all of the years from 1882 to 1904 inclusive it made returns of its property for taxation as required by its Charter.

(2.) That in the year 1903 it made its return in like manner as in preceding years, in the manner set forth in its original Petition.

(3.) That when said return was thus made, said Defendant William A. Wright objected to its said return and demanded that it file an additional and complete return, showing all property of every sort owned by petitioner.

(4.) Thereupon Petitioner on the — day of May 1903 filed
104 a return with Defendant as such Comptroller, a copy of which is attached and marked "Exhibit A" as a part hereof.

(5.) Petitioner also on the — day of May 1904 filed for the year 1904 a return identical in all respects with that of 1903, so far as relates to the item of Stocks and Bonds owned by Petitioner.

(6.) That at the time of making and filing with the Comptroller General its said returns for the years 1903 and 1904, this Petitioner filed therewith, and as a part thereof, a Protest, reciting that "it is not liable to pay taxes on $1,716,040 of stocks and bonds owned by the Company, or any part thereof, except $31,000 of Walton Railroad Company's Bonds, and $25,000 Bills Receivable, the balance, $1,660,040 consisting of shares of stock of the following companies, to-wit: Georgia Railroad Bank, Atlanta & West Point Railroad Company, Western Railway of Alabama, none of which shares being taxable to the holder thereof under the laws of this State."

(7.) Petitioner further shows that no objections to said returns as to the matter above mentioned were made by the Comptroller General, and no notice of any objections to such matters and their valuation was given to Petitioner.

(8.) Petitioner further shows that after the dismissal of the Bill in the case of the Louisville and Nashville Railroad Company *vs.* William A. Wright, in the United States Circuit Court for the Northern District of Georgia, that the Comptroller General
105 did not give Petitioner any notice of any dissatisfaction with said returns or the valuation of the stocks and bonds returned by Petitioner, included in which was the 15,000 shares of the Western Railway of Alabama.

(9.) Petitioner further says that while insisting that the Western Railway of Alabama stock was not taxable, and while insisting that the Comptroller General had no power or jurisdiction to assess the same for taxes for any year from 1883 to 1904, it further specially objects that the Comptroller General was, on Feb. 7th, 1905, wholly without jurisdiction or authority to assess the Western Railway of Alabama stock.

(*a.*) At a value beyond that at which it had been returned by Petitioner, and which returns had been accepted.

(*b.*) That the Comptroller General had no power or authority to assess said stock at $2,200,000 for each of the years 1903 and 1904.

(*c.*) That said assessment was further illegal because made without the notice required by Political Code # 812.

(*d.*) That the executions are void, so far as issued on the assessments for 1903 and 1904, for the reasons alleged in the original Petition, and the previous amendment, applicable to all to executions, and also for the special reasons herein recited, applicable to 1903 and 1904.

J. B. CUMMING,
ALEX. C. KING,
J. R. LAMAR,
Att'ys for Petitioner.

106 STATE OF GEORGIA, *Richmond County:*

Personally appeared Charles G. Goodrich, who, being first duly sworn, deposes and says that he is the Cashier of The Georgia Rail-Road and Banking Company; that he has read the foregoing amendment, and that the facts stated therein are true.

C. G. GOODRICH.

Sworn to and subscribed before me, this May 7th, 1905.

RUFUS H. BROWN,
N. P., Richmond Co., Ga.

Rufus H. Brown. (N. P. Seal.)

Ordered filed without prejudice to objection or demurrer. This May 18th, 1905.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 18th day of May, 1905.

T. H. JEFFRIES,
DeputyClerk.

(Here follows annual return for taxation marked pp. 107 and 108.)